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TREATIES

AND OTHER

INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA

EDITED BY

HUNTER MILLER

VOLUME 6

DOCUMENTS 152–172 : 1852–1855

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PREFACE

The scheme of this work as a whole is fully described in volume 1. It may be said here that the arrangement of the documents is chronological according to date of signature; each document has a serial number, but the numbers are merely for convenience and have no other significance. All international acts of the United States which have gone into force are in general included, whether now in force or not; but postal conventions and treaties with Indian tribes are not included. Extrinsic and related papers which are referred to in the documents proper are also printed, so far as possible.

The headnote to each document gives the relevant dates; the notes which follow each document are mainly textual and procedural but treat to some extent of the diplomatic history of the document.

As the document volumes are to be globally indexed, there is no separate index for this volume.

The print of the documents and of the quotations in the notes is literal and thus includes any peculiarities and even any errors of the original. Certain texts are reproduced in facsimile.

This volume contains twenty-one documents of the treaty edition, numbered from 152 to 172, inclusive. The period covered is from June 1852 to January 1855.

A full-size reproduction of the chart of Article 5 of Perry's Treaty with Japan (Document 164; see p. 509) is contained in a pocket inside the back cover of this volume.

Since publication of volume 5 most of the records in the custody of the former Archives Section of the Office of the Historical Adviser of the Department of State, and also various other groups of records of the Department, have been transferred to The National Archives. Removal of the records of the Archives Section, comprising those of earlier date than August 15, 1906, was completed prior to August 1938. Included in the transfer were original treaties, diplomatic and consular correspondence, domestic and miscellaneous letters, records of claims commissions and international boundary commissions, certain legation and consular archives, and other papers, all of which serve as source material for this edition. Accordingly, most of the records cited in this volume with the abbreviation "D.S." are

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not now in the Department of State, but in the Division of State Department Archives of The National Archives. For a survey of the material that has been transferred from the Department of State, see Guide to the Material in The National Archives, 11–53, and quarterly supplements thereto.

H. M.

SEPTEMBER 8, 1941.

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PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION : JUNE 16 AND NOVEMBER 16, 1852

Convention for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases, signed at Washington June 16, 1852, between the United States on the one part, and on the other Prussia, Saxony, Electoral Hesse, the Grand Duchy of Hesse, Saxe-Weimar, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Brunswick, Anhalt-Dessau, Anhalt-Bernburg, Nassau, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss-Greiz (elder branch), Reuss-Schleiz (junior branch), Lippe, Hesse-Homburg, and Frankfort, with additional article signed at Washington November 16, 1852. Originals in English and German.

Convention submitted to the Senate June 23, 1852. (Message of June 22, 1852.) Additional article submitted to the Senate December 9, 1852. (Message of December 8, 1852.) Resolutions of advice and consent to the convention and additional article March 15, 1853. Ratified by the United States May 27, 1853. Ratified by Prussia and the other mentioned German states April 25, 1853. Ratifications exchanged at Washington May 30, 1853. Proclaimed June 1, 1853.

Accession of Bremen signed at Bremen September 6, 1853. Accepted by the United States October 14, 1853. Accession and acceptance exchanged at Washington October 14, 1853. Proclaimed October 15, 1853.

Accession of Württemberg signed at Stuttgart October 13, 1853, and transmitted with a note of December 21, 1853, received December 22, 1853. Accepted by the United States December 24, 1853; acceptance transmitted as an accompaniment to a note of the same date. Proclaimed December 27, 1853.

Accession of Mecklenburg-Schwerin signed at Schwerin November 26, 1853, and transmitted with a note dated and received January 2, 1854. Accepted by the United States January 5, 1854; acceptance transmitted as an accompaniment to a note of January 6, 1854. Proclaimed January 6, 1854.

Accession of Mecklenburg-Strelitz signed at Neustrelitz December 2, 1853, and transmitted with a note of January 19, 1854, received January 20, 1854. Accepted by the United States January 26, 1854; acceptance transmitted as an accompaniment to a note of January 27, 1854. Proclaimed January 26, 1854.

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Accession of Oldenburg signed at Oldenburg December 30, 1853, and transmitted with a note of March 6, 1854, received March 8, 1854. Accepted by the United States March 21, 1854; acceptance transmitted as an accompaniment to a note of March 23, 1854. Proclaimed March 21, 1854.

Accession of Schaumburg-Lippe signed at Bückeburg June 7, 1854, and transmitted with a note of July 20, 1854, received July 21, 1854. Accepted by the United States July 26, 1854; acceptance transmitted with a note of July 27, 1854. Proclaimed July 26, 1854.

Convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States, on the one part, and Prussia and other States of the Germanic Confederation, on the other part.

Vertrag zwischen den Vereinigten Staaten von Nord-Amerika einerseits und Preußen und anderen Staaten des Deutschen Bundes andererseits, wegen der in gewissen Fällen zu gewährenden Auslieferung der vor der Justiz flüchtigen Verbrecher.

Whereas, it is found expedient for the better administration of justice and the prevention of crime, within the territories and jurisdiction of the parties, respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; and also to enumerate such crimes explicitly; and whereas the laws and Constitution of Prussia and of the other German States, parties to this Convention, forbid them to surrender their own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the Convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States; therefore, on the one part, the United States of America, and on the other part, His Majesty the King of Prussia, in His own

Da es Behufs besserer Verwaltung der Rechtspflege und zur Verhütung von Verbrechen innerhalb des Gebietes und der Gerichtsbarkeit der contrahirenden Theile zweckmäßig befunden worden ist, daß Individuen, welche gewisse schwere Verbrechen begehen und vor der Justiz flüchtig geworden sind, unter Umständen gegenseitig ausgeliefert werden, auch daß die betreffenden Verbrechen namentlich aufgezählt werden; und da die Gesetze und Verfassung Preußens und der anderen Deutschen Staaten, welche diesen Vertrag contrahiren, ihnen nicht gestatten, ihre eigenen Unterthanen einer auswärtigen Jurisdiction zu überliefern, also die Regierung der Vereinigten Staaten mit Rücksicht darauf, daß der Vertrag unter strenger Reciprocität geschlossen wird, gleicherweise von jeder Verpflichtung frei sein soll,

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name as well as in the name of His Majesty the King of Saxony, His Royal Highness the Elector of Hesse, His Royal Highness the Grand Duke of Hesse and on Rhine, His Royal Highness the Grand Duke of Saxe-Weimar-Eisenach, His Highness the Duke of Saxe-Meiningen, His Highness the Duke of Saxe Altenburg, His Highness the Duke of Saxe-Coburg-Gotha, His Highness the Duke of Brunswick, His Highness the Duke of Anhalt-Dessau, His Highness the Duke of Anhalt-Bernburg, His Highness the Duke of Nassau, His Serene Highness, the Prince Schwarzburg-Rudolstadt, His Serene Highness the Prince of Schwarzburg Sondershausen, Her Serene Highness the Princess and Regent of Waldeck, His Serene Highness the Prince of Reuss, elder branch, His Serene Highness the Prince of Reuss, junior branch, His Serene Highness the Prince of Lippe, His Serene Highess the Landgrave of Hesse Homburg as well as the free city of Francfort having resolved to treat on this subject, have for that purpose appointed their respective plenipotentiaries to negotiate and conclude a convention; that is to say:

Bürger der Vereinigten Staaten auszuliefern:—so haben einerseits die Vereinigten Staaten von Nord-Amerika und andererseits Seine Majestät der König von Preußen, sowohl für Sich als im Namen Seiner Majestät des Königs von Sachsen, Seiner Königlichen Hoheit des Kurfürsten von Hessen, Seiner Königlichen Hoheit des Großherzogs von Hessen und bei Rhein, Seiner Königlichen Hoheit des Großherzogs von Sachsen-Weimar-Eisenach, Seiner Hoheit des Herzogs von Sachsen-Meiningen, Seiner Hoheit des Herzogs von Sachsen-Altenburg, Seiner Hoheit des Herzogs von Sachsen-Koburg-Gotha, Seiner Hoheit des Herzogs von Braunschweig, Seiner Hoheit des Herzogs von Anhalt-Dessau, Seiner Hoheit des Herzogs von Anhalt-Bernburg, Seiner Hoheit des Herzogs von Nassau, Seiner Durchlaucht des Fürsten von Schwarzburg-Rudolstadt, Seiner Durchlaucht des Fürsten von Schwarzburg-Sondershausen, Ihrer Durchlaucht der Fürstin und Regentin von Waldeck, Seiner Durchlaucht des Fürsten von Reuß älterer Linie, Seiner Durchlaucht des Fürsten von Reuß jüngerer Linie, Seiner Durchlaucht des Fürsten zu Lippe, Seiner Durchlaucht des Landgrafen von Hessen-Homburg, sowie der freien Stadt Frankfurt, beschlossen, über diesen Gegenstand zu verhandeln, und zu diesem Behufe ihre respectiven Bevollmächtigten ernannt, um

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The President of the United States of America, Daniel Webster, Secretary of State, and His Majesty the King of Prussia in His own name as well as in the name of the other German Sovereigns above enumerated, and the free city of Francfort, Frederic Charles Joseph Von Gerolt, His said Majesty's Minister Resident near the Government of the United States, who, after reciprocal communication of their respective powers, have agreed to and signed the following articles:

ARTICLE I.

It is agreed that the United States and Prussia, and the other States of the Germanic Confederation included in, or which may hereafter accede to this Convention, shall, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, deliver up to justice all persons, who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the

eine Uebereinkunft zu verhandeln und abzuschließen; nämlich:

Der Präsident der Vereinigten Staaten von Nord-Amerika den Staats-Sekretair Daniel Webster, und Seine Majestät der König von Preußen in Seinem eigenen Namen sowohl, als Namens der anderen, oben aufgezählten Deutschen Souveräne und der freien Stadt Frankfurt, Allerhöchst-Ihren Minister-Residenten bei der Regierung der Vereinigten Staaten, Friedrich Carl Joseph von Gerolt, welche nach gegenseitiger Mittheilung ihrer respectiven Vollmachten, die folgenden Artikel vereinbart und unterzeichnet haben:

ARTIKEL I.

Man ist dahin übereingekommen, daß die Vereinigten Staaten und Preußen nebst den anderen Staaten des Deutschen Bundes, die in diese Uebereinkunft miteingeschlossen sind oder die derselben später beitreten mögen, auf gegenseitige Requisitionen, welche respective sie selbst oder ihre Gesandten, Beamten oder Behörden erlassen, alle Individuen der Justiz ausliefern sollen, welche beschuldigt, das Verbrechen des Mordes, oder eines Angriffs in mörderischer Absicht, oder des Seeraubes, oder der Brandstiftung, oder des Raubes, oder der Fälschung, oder des Ausgebens falscher Documente, oder der Verfertigung oder Verbreitung falschen Geldes—sei es gemünztes oder Papier-Geld,—

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other; *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

oder des Defects oder der Unterschlagung öffentlicher Gelder, innerhalb der Gerichtsbarkeit eines der beiden Theile begangen zu haben,—in dem Gebiete des andern Theils eine Zuflucht suchen oder dort aufgefunden werden: mit der Beschränkung jedoch, daß dies nur auf solche Beweise für die Strafbarkeit geschehen soll, welche nach den Gesetzen des Orts, wo der Flüchtling oder das so beschuldigte Individuum aufgefunden wird, dessen Verhaftung und Stellung vor Gericht rechtfertigen würden, wenn das Verbrechen oder Vergehen dort begangen wäre; und die respectiven Richter und andere Behörden der beiden Regierungen sollen Macht, Befugniß und Autorität haben, auf eidlich erhärtete Angabe einen Befehl zur Verhaftung des Flüchtlings oder so beschuldigten Individuums zu erlassen, damit er vor die gedachten Richter oder andern Behörden zu dem Zwecke gestellt werde, daß der Beweis für die Strafbarkeit gehört und in Erwägung gezogen werde; und wenn bei dieser Vernehmung der Beweis für ausreichend zur Aufrechthaltung der Beschuldigung erkannt wird, so soll es die Pflicht des prüfenden Richters oder der Behörde sein, selbigen für die betreffende executive Behörde festzustellen, damit ein Befehl zur Auslieferung eines solchen Flüchtlings erlassen werden könne. Die Kosten einer solchen Verhaftung

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und Auslieferung sollen von dem Theil getragen und erstattet werden, welcher die Requisition erläßt und den Flüchtling in Empfang nimmt.

ARTICLE II.

The stipulations of this Convention shall be applied to any other State of the Germanic Confederation, which may hereafter declare its accession thereto.

ARTIKEL II.

Die Bestimmungen dieser Uebereinkunft sollen auf jeden andern Staat des Deutschen Bundes Anwendung finden, der später seinen Beitritt zu derselben erklärt.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects, under the stipulations of this Convention.

ARTIKEL III.

Keiner der contrahirenden Theile soll gehalten sein, in Gemäßheit der Bestimmungen dieser Uebereinkunft seine eigenen Bürger oder Unterthanen auszuliefern.

ARTICLE IV.

Whenever any person accused of any of the crimes enumerated in this Convention, shall have committed a new crime in the territories of the State where he has sought an asylum, or shall be found, such person shall not be delivered up under the stipulations of this convention, until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTIKEL IV.

Wenn ein Individuum, das eines der in dieser Uebereinkunft aufgezählten Verbrechen angeklagt ist, ein neues Verbrechen in dem Gebiete des Staates begangen haben sollte, wo er eine Zuflucht gesucht hat oder aufgefunden wird, so soll ein solches Individuum nicht eher in Gemäßheit der Bestimmungen dieser Uebereinkunft ausgeliefert werden, als bis dasselbe vor Gericht gestellt worden sein und die auf ein solches neues Verbrechen gesetzte Strafe erlitten haben oder freigesprochen worden sein wird.

ARTICLE V.

The present Convention shall continue in force until the 1st of January, 1858, and if neither party shall have given to the

ARTIKEL V.

Die gegenwärtige Uebereinkunft soll bis zum 1sten Januar 1858 in Kraft bleiben, und wenn kein Theil dem andern sechs

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other six months previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other, at any time after the expiration of the said first day of January 1858.

ARTICLE VI.

The present Convention shall be ratified by the President by and with the advice and consent of the Senate of the United States, and by the government of Prussia, and the ratifications shall be exchanged at Washington within six months from the date hereof or sooner if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this Convention and have hereunto affixed our seals.

Done in triplicate at Washington the sixteenth day of June, one thousand eight hundred and fifty-two, and the seventy-sixth year of the Independence of the United States.

DAN[l] WEBSTER [Seal]
FR. v. GEROLT [Seal]

Monate vorher Mittheilung von seiner Absicht macht, dieselbe dann aufzuheben, so soll sie ferner in Kraft bleiben bis zu dem Ablauf von zwölf Monaten, nachdem einer der hohen contrahirenden Theile dem andern von einer solchen Absicht Kenntniß gegeben; wobei jeder der hohen contrahirenden Theile sich das Recht vorbehält, dem andern eine solche Mittheilung zu jeder Zeit nach dem Ablauf des gedachten ersten Januar 1858 zugehen zu lassen.

ARTIKEL VI.

Die gegenwärtige Uebereinkunft soll ratificirt werden von dem Präsidenten unter und mit der Genehmigung und Zustimmung des Senates der Vereinigten Staaten und von der Preußischen Regierung und die Ratificationen sollen zu Washington innerhalb sechs Monaten von dem heutigen Datum, oder wo möglich früher, ausgewechselt werden.

Zu Urkund dessen haben wir, die respectiven Bevollmächtigten, diese Uebereinkunft unterzeichnet und hierunter unsere Siegel beigedrückt.

In dreifacher Ausfertigung geschehen zu Washington den sechszehnten Juni 1852, im 76ten Jahre der Unabhängigkeit der Vereinigten Staaten.

FR. v. GEROLT [Seal]
DAN[l] WEBSTER [Seal]

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Additional Article to the Convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Prussia and other States of the Germanic Confederation on the other part, at Washington, the 16th day of June, one thousand eight hundred and fifty two.

Whereas it may not be practicable for the ratifications of the Convention for the mutual delivery of criminals, fugitives from justice, in certain cases, between the United States and Prussia and other States of the Germanic Confederation, signed at Washington on the 16th day of June 1852, to be exchanged within the time stipulated in said Convention; and whereas both parties are desirous, that it should be carried into full and complete effect, the President of the United States of America has fully empowered on his part Edward Everett, Secretary of State of the United States, and His Majesty the King of Prussia in His own name, as well as in the name of the other German Sovereigns enumerated in the aforesaid Convention, has likewise fully empowered Frederick Charles Joseph von Gerolt, His said Majesty's Minister Resident near the Government of the United States, who have agreed to and signed the following article:

Additional-Artikel zu dem am 16ten Juni Eintausend acht hundert und zwei und fünfzig zu Washington zwischen den Vereinigten Staaten von Nord-Amerika, einerseits, und Preußen und anderen Staaten des Deutschen Bundes, andererseits, abgeschlossenen Vertrage wegen der in gewissen Fällen gegenseitig zu gewährenden Auslieferung der vor der Justiz flüchtigen Verbrecher.

Da es nicht thunlich sein möchte, daß die Ratificationen des am 16ten Juni 1852 zu Washington unterzeichneten Vertrages zwischen den Vereinigten Staaten einerseits und Preußen und anderen Staaten des Deutschen Bundes andererseits, wegen der in gewissen Fällen zu gewährenden gegenseitigen Auslieferung der vor der Justiz flüchtigen Verbrecher innerhalb der im genannten Vertrage verabredeten Frist ausgewechselt werden, und da beide Theile wünschen, daß derselbe zur vollständigen Ausführung gelange, so hat zu dem Ende der Präsident der Vereinigten Staaten von Nord-Amerika seinerseits den Staats-Secretair der Vereinigten Staaten Edward Everett, und Seine Majestät der König von Preußen in Seinem eigenen Namen sowohl, als Namens der anderen in dem vorgenannten Vertrage erwähnten Deutschen Souveraine, Allerhöchst Ihren Minister Residenten bei der Regierung der Vereinigten Staaten Friedrich Carl Joseph von Gerolt mit der nöthigen Voll-

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The ratifications of the Convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded on the 16th of June 1852, shall be exchanged at Washington within one year from the date of this agreement, or sooner, should it be possible.

The present additional Article shall have the same force and effect, as if it had been inserted, word for word, in the aforesaid Convention of the 16th of June 1852, and shall be approved and ratified in the manner therein prescribed.

In faith whereof we, the respective Plenipotentiaries, have signed this agreement and have hereunto affixed our seals.

Done at Washington, this sixteenth day of November one thousand eight hundred and fifty two, and the seventy seventh year of the Independence of the United States.

EDWARD EVERETT [Seal]
FR. v. GEROLT [Seal]

macht versehen, welche den folgenden Artikel vereinbart und unterzeichnet haben:

Die Ratificationen des am 16ten Juni 1852 abgeschlossenen Vertrages wegen der in gewissen Fällen zu gewährenden gegenseitigen Auslieferung der vor der Justiz flüchtigen Verbrecher, sollen zu Washington innerhalb eines Jahres von dem Datum dieser Uebereinkunft an gerechnet, oder womöglich früher, ausgewechselt werden.

Der gegenwärtige Additional-Artikel soll dieselbe Kraft und Wirkung haben, als ob er Wort für Wort in vorgenannten Vertrag vom 16ten Juni 1852 mitaufgenommen worden wäre und soll in der in demselben vorgeschriebenen Weise genehmigt und ratificirt werden.

Zu Urkund dessen haben wir, die respectiven Bevollmächtigten, diese Uebereinkunft gezeichnet und unsere Siegel hier beigedrückt.

Geschehen zu Washington, den sechszehnten November Eintausend acht hundert zwei und fünfzig und im sieben und siebenzigsten Jahre der Unabhängigkeit der Vereinigten Staaten.

EDWARD EVERETT [Seal]
FR. v. GEROLT [Seal]

NOTES

This convention of June 16, 1852, was signed in triplicate (final clause); the additional article of November 16, 1852, was in duplicate (D.S., 2 Notes from the Prussian Legation, November 10, 1852). One example of each instrument is in the treaty file (No. 296), written in

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English and German, with the English in the left columns. As may be seen from the printed texts, the United States has naming precedence throughout in both versions of the convention and of the additional article, and the signatures of Secretary of State Everett to both versions of the additional article precede those of the Prussian Plenipotentiary, although the *alternat* is observed in the order of signatures to the two versions of the convention.

Among the other file papers, and in customary form, are the two attested resolutions of the Senate of March 15, 1853, the duplicate United States instrument of ratification of May 27, the certificate of the exchange of ratifications, in English, of May 30, and the original proclamation of June 1, 1853. The following note of Secretary of State Marcy of May 28, 1853, to the Minister Resident of Prussia, Baron von Gerolt, is relevant (D.S., 6 Notes to German States, 351–52):

> The usual certificate of exchange will have to be executed by us. I transmit a draft of one in English. If no alterations in it should occur to you as being desirable, I will thank you to have it translated into German ready for signature, as it is presumed that your government would prefer receiving with the President's ratification, a version of the certificate in that language. Your own name and that of your Sovereign will of course take precedence in the German version.

In this case the original full powers were exchanged; that given to Baron Friedrich Carl Joseph von Gerolt, Minister Resident of Prussia, the Plenipotentiary of Prussia and the other named German states, is in the treaty file, with this accompanying translation:

> We, Frederick William, by the grace of God King of Prussia, certify and acknowledge herewith that after having agreed with the Government of the United States for Us and in the name of His Majesty the King of Saxony, His Royal Highness the Elector of Hesse, His Royal Highness the Grand Duke of Hesse and on Rhine, His Royal Highness the Grand Duke of Saxe-Weimar-Eisenach, His Highness the Duke of Saxe-Meiningen, His Highness the Duke of Saxe-Altenburg, His Highness the Duke of Saxe-Coburg-Gotha, His Highness the Duke of Brunswick, His Highness the Duke of Anhalt-Dessau, His Highness the Duke of Anhalt-Bernburg, His Highness the Duke of Nassau, His Serene Highness the Prince of Schwarzburg-Rudolstadt, His Serene Highness the Prince of Schwarzburg-Sondershausen, Her Serene Highness the Princess and Regent of Waldeck, His Serene Highness the Prince of Reuss of the elder branch, His Serene Highness the Prince of Reuss of the younger branch, His Serene Highness the Prince of Lippe, His Serene Highness the Landgrave of Hesse-Homburg, as well as the free city of Frankfort—to negotiate a treaty for the mutual delivery of criminals fugitive from justice, and after having appointed as Our Plenipotentiary to that object Our Minister Resident near the Government of the United States, Frederick Charles Joseph von Gerolt, Knight of Our Order of the Red Eagle, Fourth Class, and of the Imperial Russian Order of Stanislaus, Second Class:
>
> We confer to the same herewith and in virtue of the present, full power to negotiate with the Plenipotentiary or the Plenipotentiaries of the Government of the United States on the forementioned object and after agreement of the same to conclude a convention; we also promise to approve all what Our Plenipotentiary will have concluded and signed in virtue of the present power and of the instructions which have been given to him.
>
> In witness whereof We have issued the present power and caused Our royal seal to be affixed to the same.
>
> Done at Charlottenburg on the 6th May 1852.
>
> [Seal] FREDERICK WILLIAM
>
> v. MANTEUFFEL

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The full power of Secretary of State Webster was dated the day before the signature of the convention, in this form (D.S., 3 Credences, 427):

Millard Fillmore, President of the United States of America.

To all to whom these presents shall come, Greeting:

Know Ye, That reposing special trust and confidence in the integrity, prudence and ability of Daniel Webster, Secretary of State of the United States, I have invested him with full and all manner of power for and in the name of the United States to meet and confer with any person or persons furnished with like powers on the part of Prussia and the other German States, associated or which may hereafter be associated with Prussia for this object; and with him or them to treat and negotiate of and concerning a Convention or Conventions, Treaty or Treaties, for the mutual delivery of persons, fugitive from justice, charged with crimes in certain cases; and to conclude and sign a Convention or Conventions, Treaty or Treaties, touching the premises, for the final ratification of the President, by and with the advice and consent of the Senate of the United States.

In testimony whereof I have caused the seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington this fifteenth day of June in the Year of Our Lord one thousand eight hundred and
(L.S.) fifty two, and of the Independence of the United States of America, the seventy-sixth.

MILLARD FILLMORE.

By the President,
DANIEL WEBSTER,
Secretary of State.

It does not appear that a full power was issued to Secretary of State Everett for the signature of the additional article of November 16, 1852.

Also in the file is the original instrument of ratification of the convention and additional article by the King of Prussia, reading thus in translation; in that ratification, which is written in German, are included the texts of the convention and additional article, the German versions of each in the left columns; in those texts Prussia is named first throughout, except in the English of the title of the convention; the indicated signatures of the convention, but not those of the additional article, are in the one and the other order:

We, Friedrich Wilhelm, by the grace of God King of Prussia, etc.,

proclaim and make known by these presents:

The convention regarding the extradition of fugitive criminals concluded June 16, 1852, between Our Plenipotentiary and the Plenipotentiary of the Government of the United States of North America, which treaty reads word for word as follows:

[Here follows the text of the convention in German and English]

as well as the additional article thereto, agreed upon November 16, 1852, which reads word for word as follows:

[Here follows the text of the additional article in German and English]

having been examined by Us and all their provisions found to be in accordance with Our will, We have approved and ratified this treaty and the additional article belonging thereto, both in the name of the German Governments contracting together with Us and in virtue of the special agreement concluded with them with regard thereto, as We do approve and ratify the same by the present instrument,

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and also promise to fulfil the same and have it fulfilled by Our authorities and those of the states contracting together with us.

In faith whereof We have executed the present instrument of ratification and had Our royal seal affixed thereto.

Thus done and given at Potsdam April 25, 1853.

[Seal] FRIEDRICH WILHELM R

MANTEUFFEL

Instrument of ratification of the treaty concluded on June 16, 1852, between Prussia, together with other German states, and the United States of North America with regard to reciprocal extradition of fugitive criminals, as well as of the additional article belonging thereto concluded on November 16, 1852.

THE ACCESSIONS

Six states of the Germanic Confederation (Deutscher Bund) acceded to this convention by declarations of accession made pursuant to Article 2. These were Bremen, Württemberg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, and Schaumburg-Lippe. The procedure followed was substantially, though not precisely, the same in each case. There was a formal declaration of accession, followed by a formal instrument of acceptance on the part of the United States and by proclamation. The six declarations of accession are written in German only and are all in very similar form. Translations of five of them, with a statement regarding that of Württemberg, are printed in 18 Statutes at Large, part 2, Public Treaties, pages 92, 472, 473, 579, 692, and 810. A rendering of the declaration of Württemberg is printed below. The six proclamations are printed in 10 Statutes at Large, 970–72.

The form of declaration had been agreed upon by the Plenipotentiaries at the time of signature of the convention, and a draft thereof was then made in the Department of State; subsequent notes had confirmed that understanding (D.S., 2 Notes from the Prussian Legation, August 25, 1852, and enclosure, a draft declaration, in German and English, which is bound following a note of Von Gerolt of November 2, 1852; 6 Notes to German States, 316, August 31, 1852). There was also correspondence proposing and accepting the form of a "demande d'accession" (to precede the declaration); the draft thereof is not now available (note of Von Gerolt of November 2, 1852, previously cited, which has with it a quite erroneous translation from the French; *ibid.*, 330, November 12, 1852, based on the mistranslation); but there is no such original paper in the files; its use was doubtless later deemed unnecessary.

In the file for Bremen (No. 37) are the original declaration of accession of September 6, 1853, which embodies the text of the convention in German and English (but lacks the text of the additional article); the duplicate instrument of acceptance on the part of the United States of October 14, 1853; and the original proclamation of the following day. The instrument of acceptance is in this form:

Franklin Pierce, President of the United States of America.

To all to whom these presents shall come. Greeting:

Know Ye, that whereas, a Convention for the mutual delivery of criminals fugitives from justice in certain cases, between the United States of North America on

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the one part and Prussia and other States of the Germanic Confederation on the other part, was concluded at Washington on the sixteenth day of June, 1852, by the Plenipotentiaries of the contracting parties and was subsequently duly ratified on the part of the contracting governments:

And whereas, pursuant to the second article of the said Convention the United States have agreed that the stipulations thereof shall be applied to any other State of the Germanic Confederation which might subsequently declare its accession thereto:

And whereas the Government of the Free and Hanseatic City of Bremen has signified its desire to accede to the said Convention of the 16th of June, 1852, a copy of which is hereto annexed:

Now therefore, I, Franklin Pierce, President of the United States, promise and engage that all and every one of the articles and provisions contained in the said Convention, shall be faithfully observed and executed within the United States.

In faith whereof, I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done at Washington, the fourteenth day of October, in the Year of
[Seal] Our Lord one thousand eight hundred and fifty three, and of the Independence of the United States the seventy-eighth.

FRANKLIN PIERCE

By the President:
W. L. MARCY, *Secretary of State.*

In the case of Bremen the procedure of exchange was followed. Among the file papers is the original full power (not written in German script) given to Rudolf Schleiden, Minister Resident of Bremen, dated September 6, 1853, to deliver the declaration of accession in exchange for a declaration of the Government of the United States; and there is this certificate of the exchange:

The Undersigned, Rudolph Schleiden, Minister Resident of the Free Hanseatic City of Bremen, and William L. Marcy, Secretary of State of the United States, having met for the purpose of exchanging the accession of the Free Hanseatic City of Bremen to the Convention for the mutual delivery of criminals, fugitives from justice, in certain cases, between the United States and Prussia and other States of the Germanic Confederation, for the acceptance of the same by the President of the United States,—Certify that the said exchange has this day, with due solemnity, been effected by them on the part of their respective governments.

In witness whereof, they have hereunto set their respective seals at Washington, the fourteenth day of October, 1853.

W. L. MARCY. [Seal]

R. SCHLEIDEN. [Seal]

The proclamation of the accession of Bremen was adapted to the circumstances of the case, reading thus:

By the President of the United States of America.

A PROCLAMATION.

Whereas it is provided by the second article of the Convention of the 16th of June, 1852, between the United States and Prussia and other States of the Germanic Confederation, for the mutual delivery of criminals fugitives from justice in certain cases, that the stipulations of that Convention shall be applied to any other State of the Germanic Confederation which might thereafter declare its accession thereto:

And whereas the Free Hanseatic City of Bremen has declared its accession to the said Convention, and the exchange of the said declaration for my acceptance of the same was made at Washington on the 14th instant by Rudolph Schleiden, Minister Resident of the said Free Hanseatic City of Bremen, and William L. Marcy, Secretary of State of the United States, on behalf of their respective Governments:

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Now, therefore, be it known that I, Franklin Pierce, President of the United States of America, have caused this information to be made public, in order that the stipulations of the said Convention may be observed and fulfilled with good faith in respect to the Free Hanseatic City of Bremen by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at Washington, the fifteenth day of October, in the year of
[Seal] Our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

FRANKLIN PIERCE

By the President:
W. L. MARCY
Secretary of State.

It may be mentioned here that the five proclamations of the other accessions were alike, *mutatis mutandis*, and were similar to that of the accession of Bremen except in the second paragraph, which reads, in the proclamation of the accession of Württemberg, for example, as follows:

And whereas the Government of Wurtemberg has declared its accession to the said Convention, and has caused the said Declaration to be lodged in the Department of State of the United States:

In the file for Württemberg (No. 374) is the original declaration of accession, dated at Stuttgart October 13, 1853, which includes the texts in German and English of the convention and the additional article and which reads as follows (file translation slightly revised); it will be observed that its form is very similar to that of the declarations of the other five acceding states of the Germanic Confederation; those declarations are, as heretofore mentioned, printed in translation in the Statutes at Large:

Inasmuch as a convention for the reciprocal extradition of fugitive criminals in certain cases was concluded between Prussia and other states of the Germanic Confederation on the one hand and the United States of North America on the other under date of June 16, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and was ratified by the contracting Governments; and whereas, in the second article thereof, the United States of North America have also declared that they agree that the provisions of the aforesaid convention shall be applied to any other state of the Germanic Confederation which shall have subsequently declared its accession to the convention; now, therefore, in pursuance thereof, the Government of His Majesty the King of Württemberg hereby declares its accession to the aforesaid convention of June 16, 1852, the text of which is word for word as follows:

[Here follow the texts, in German and English, of the convention of June 16 and the additional article of November 16, 1852]

and hereby gives the express assurance that each and every article and provision of this convention shall be faithfully observed and executed within the territory of the Kingdom of Württemberg.

In testimony whereof the Royal Ministry of Foreign Affairs of Württemberg has, in the name of His Majesty the King of Württemberg, executed this instrument of accession and caused the royal official seal to be thereunto affixed.

Done at Stuttgart October 13, 1853.

Royal Ministry of Foreign Affairs of Württemberg.

[Seal] FREIHERR VON NEURATH

V. LOBSTEIN

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Also in the Württemberg file are the duplicate instrument of acceptance on the part of the United States of December 24, 1853, and the original proclamation of December 27, 1853; the first of these, the acceptance, was the model for the later acceptances (Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, and Schaumburg-Lippe); it is of highly unusual form, particularly in that it passed under the Great Seal although it is not signed by the President but only by the Secretary of State, as follows:

> Whereas, a Convention for the mutual delivery of criminals fugitives from justice in certain cases, between the United States of North America on the one part and Prussia and other States of the Germanic Confederation on the other part, was concluded at Washington on the sixteenth day of June, 1852, by the Plenipotentiaries of the contracting parties and was subsequently duly ratified on the part of the contracting governments:
>
> And whereas, pursuant to the second article of the said Convention the United States have agreed that the stipulations thereof shall be applied to any other State of the Germanic Confederation which might subsequently declare its accession thereto:
>
> And whereas, the Government of Wurtemberg has signified its desire to accede to the said Convention of the 16th of June, 1852, a copy of which is hereto annexed:
>
> Now therefore, I, William L. Marcy, Secretary of State of the United States, by direction and in behalf of the President, promise and engage that all and every one of the articles and provisions contained in the said Convention, shall be faithfully observed and executed within the United States.
>
> In faith whereof, I have hereunto set my hand and have caused the seal of the United States to be affixed.
>
> Done at Washington, the twenty-fourth day of December, in the
> [Seal] year of Our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.
>
> W. L. Marcy.

The declaration of Württemberg was delivered with a note of the Minister Resident of Prussia of December 21, 1853, received on the following day (D.S., 2 Notes from the Prussian Legation). The acceptance on the part of the United States was forwarded by express[1] on the date of the answering note of December 24, 1853 (D.S., 7 Notes to the Prussian Legation, 5).

Also in the Württemberg file is a copy of the declaration of accession certified at Stuttgart July 7, 1886, and at Berlin July 17, 1886. This certified copy was an enclosure to a despatch of July 26, 1886, from Berlin (D.S., 42 Despatches, Germany, No. 295), and was obtained from the German Government because the original declaration had at the time been mislaid (see D.S., 17 Instructions, Germany, 650, June 7, 1886).

In the file for Mecklenburg-Schwerin (No. 200) are the original declaration of accession, dated at Schwerin November 26, 1853, which includes the texts in German and English of the convention and the additional article; the duplicate instrument of acceptance on the part of the United States of January 5, 1854 (similar in form to that for Württemberg); and the original proclamation of January 6, 1854. The declaration of Mecklenburg-Schwerin was delivered with a note of the Minister Resident of Prussia dated and received

[1] To Baltimore, where, it seems, the Prussian Legation was then located.

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on January 2, 1854 (D.S., 2½ Notes from the Prussian Legation). The acceptance on the part of the United States was forwarded by express on the date of the answering note of January 6, 1854 (D.S., 7 Notes to the Prussian Legation, 7–8).

In the file for Mecklenburg-Strelitz (No. 201) are the original declaration of accession, dated at Neustrelitz December 2, 1853, which includes the text of the convention (without the additional article) in German only; the duplicate instrument of acceptance on the part of the United States of January 26, 1854 (similar in form to that for Württemberg); and the original proclamation of the same date. The declaration of Mecklenburg-Strelitz was delivered with a note of the Minister Resident of Prussia of January 19, 1854, received on January 20, 1854 (D.S., 2½ Notes from the Prussian Legation). The acceptance on the part of the United States was forwarded by express on the date of the answering note of January 27, 1854 (D.S., 7 Notes to the Prussian Legation, 9–10).

In the file for Oldenburg (No. 264) are the original declaration of accession, dated at Oldenburg December 30, 1853, including the texts of the convention and the additional article in German only; the duplicate instrument of acceptance on the part of the United States of March 21, 1854 (similar in form to that for Württemberg); and the original proclamation of the same date. The declaration of Oldenburg was delivered with a note of the Minister Resident of Prussia of March 6, 1854, received on March 8, 1854 (D.S., 2½ Notes from the Prussian Legation). The acceptance on the part of the United States was forwarded by express on the date of the answering note of March 23, 1854 (D.S., 7 Notes to the Prussian Legation, 14–15).

In the file for Schaumburg-Lippe (No. 318) are the original declaration of accession, dated at Bückeburg June 7, 1854, which includes the texts in German and English of the convention and the additional article; the duplicate instrument of acceptance on the part of the United States of July 26, 1854 (similar in form to that for Württemberg); and the original proclamation of the same date. The declaration of Schaumburg-Lippe was delivered with a note of the Chargé d'Affaires of Prussia, Baron Guido von Grabow, of July 20, 1854, received on July 21, 1854 (D.S., 2½ Notes from the Prussian Legation). The acceptance on the part of the United States was enclosed with the answering note of July 27, 1854 (D.S., 7 Notes to the Prussian Legation, 22).

Territorial Extent and Duration of the Convention

The Germanic Confederation was created at the Congress of Vienna; while Austria and Prussia, "for all their possessions formerly belonging to the German Empire", were the leading members of the Confederation, it comprised all the then existing states of north and south Germany; a list of the thirty-nine members follows (see vol. 3,

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p. 401, for some relevant references; also Statistik des deutschen Reichs, vol. 451, pt. 1, 16):

Austria
Prussia
Bavaria
Saxony
Hanover
Württemberg
Baden
Electoral Hesse
Grand Duchy of Hesse
Hesse-Homburg
Holstein
Luxemburg
Brunswick
Mecklenburg-Schwerin
Mecklenburg-Strelitz
Nassau
Anhalt-Dessau
Anhalt-Bernburg
Anhalt-Köthen
Saxe-Weimar
Saxe-Gotha
Saxe-Coburg
Saxe-Meiningen
Saxe-Hildburghausen
Oldenburg
Schwarzburg-Sondershausen
Schwarzburg-Rudolstadt
Hohenzollern-Hechingen
Hohenzollern-Sigmaringen
Liechtenstein
Waldeck
Reuss-Greiz
Reuss-Schleiz
Schaumburg-Lippe
Lippe
Frankfort
Lübeck
Bremen
Hamburg

By 1852 the number of members of the Germanic Confederation had been reduced to thirty-five; the two Hohenzollern principalities became part of Prussia in 1850; the five Saxon duchies of 1815 became four in 1826; and the three Anhalt duchies had become two.[1]

This convention was signed on behalf of twenty of those thirty-five members of the Germanic Confederation; six others acceded; the nine members not parties were Austria, Baden, Bavaria, Hanover, Holstein, Luxemburg, Liechtenstein, Hamburg, and Lübeck.

With four of those nine states extradition conventions were entered into within a few years after the going into force of this convention; these were Bavaria (September 12, 1853, Document 162), Hanover (January 18, 1855, Document 172), Austria (July 3, 1856, 11 Statutes at Large, 691–94), and Baden (January 30, 1857, *ibid.*, 713–17). Two of those four conventions (Bavaria and Hanover) include the substantive provisions, in almost the same wording, of this convention of 1852, and in essentials do not differ therefrom; the two others (Austria and Baden) are very similar, although they differ from the two of earlier date in omitting from the enumeration of extraditable offenses "the utterance of forged papers" and in adding a final sentence to Article 1.

Thus, during the period from 1852 to 1857 the United States made extradition conventions which covered territories of all members of the Germanic Confederation except the Duchy of Holstein, the Grand Duchy of Luxemburg, the Hanseatic cities of Hamburg and Lübeck, and the principality of Liechtenstein.

The Germanic Confederation came to an end in 1866 as a result of the war between Austria and Prussia, following the dispute regarding

[1] From 1847 Anhalt-Köthen had been under a condominium of the Dukes of Anhalt-Dessau and Anhalt-Bernburg; this continued until 1853, when Anhalt-Köthen was united with Anhalt-Dessau. In 1863 Anhalt-Dessau and Anhalt-Bernburg were united in one Duchy of Anhalt.

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Schleswig-Holstein, a war in which certain other German states took part.

The North German Confederation, which was formed following the war of 1866 and which continued until the creation of the German Reich, 1870–71, comprised the German states north of the River Main; but Hanover, Electoral Hesse, Nassau, Holstein (from which the Duchy of Lauenburg was separated), Hesse-Homburg, and the city of Frankfort were absorbed by Prussia. Austria and the small principality of Liechtenstein were, of course, not within that confederation; Luxemburg did not become a member; but the North German Confederation included all the twenty-six German states which later formed the German Empire, except the Kingdoms of Bavaria and Württemberg, the Grand Duchy of Baden, and in part (south of the Main) the Grand Duchy of Hesse; and by Article 3 of the convention of February 22, 1868, between the United States and the North German Confederation (15 Statutes at Large, 615–17), this convention of 1852 was extended to all the states thereof; the particular effect of that article was to extend the convention of 1852 to Hamburg and Lübeck (see also Article 3 of the Bancroft conventions with Baden, Bavaria, Hesse, and Württemberg, respectively of July 19, May 26, August 1, and July 27, 1868; 16 *ibid.*, 731–34; 15 *ibid.*, 661–66; 16 *ibid.*, 743–46, 735–37).

From the foregoing it will be seen that three extradition conventions of the United States, namely, this convention of June 16, 1852, that with Bavaria of September 12, 1853 (Document 162), and that with Baden of January 30, 1857 (cited above), taken together, had territorial application to all the states of the German Empire, a list whereof follows (in this list the Duchy of Lauenburg is included with Prussia; the Duchy was ruled by the King of Prussia and was incorporated in the Kingdom in 1876):

Prussia
Bavaria
Saxony
Württemberg
Baden
Hesse
Mecklenburg-Schwerin
Mecklenburg-Strelitz
Oldenburg
Brunswick
Saxe-Weimar
Saxe-Meiningen
Saxe-Altenburg
Saxe-Coburg-Gotha
Anhalt
Schwarzburg-Sondershausen
Schwarzburg-Rudolstadt
Waldeck
Reuss-Greiz
Reuss-Schleiz
Schaumburg-Lippe
Lippe
Lübeck
Bremen
Hamburg

Those three extradition conventions were recognized as continuing in force after the constitution of the German Empire (see *Terlinden* v. *Ames*, 184 U.S. 270–90, decided in 1902, and the authorities there cited); and while there was a prolonged discussion between the Governments of the United States and Germany as to the applicability to Alsace-Lorraine of the Bancroft convention of February 22, 1868, with the North German Confederation, in cases of naturalization (see Moore, Digest, III, 364–76), that question did not arise in respect

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of the extradition convention of 1852; perhaps the Government of the United States did not deem the convention of 1852 applicable to Alsace-Lorraine (see Foreign Relations, 1900, 520); such was certainly the view of the German Government (Report of the German Foreign Office of June 1889, printed in Moore, Extradition, I, 725–32); but that Government accorded extradition in Alsace-Lorraine "when no treaty requiring the same exists" (*ibid.*, 726).

While the engagements of the various German states parties to the convention of 1852 (whether by signature or by accession, or by virtue of the mentioned convention of 1868 with the North German Confederation) were of necessity to some extent several in respect of their execution (see Article 1), the convention of 1852 was single in its duration and was not subject to termination by or as to some, but only by or as to all the German states parties thereto (see the wording of Article 5 in both versions; and for wording of the opposite effect, see Article 10 of the convention with the Hanseatic Republics of December 20, 1827, Document 59).

None of the three extradition conventions under consideration was terminated by notice on the one part or the other (see Article 5 of the convention of 1852, Article 5 of the convention with Bavaria of September 12, 1853, and Article 4 of the convention with Baden of January 30, 1857) prior to the war between the United States and Germany (April 6, 1917). Pursuant to Articles 289 and 440 of the Treaty of Versailles and to clause 5 of Article 2 of the treaty between the United States and Germany signed at Berlin on August 25, 1921 (42 Statutes at Large, 1939–45), notification might have been given by the Government of the United States during the six-month period ending May 11, 1922, of the revival of any or all of those three extradition conventions; but none of them was revived, as no such notification was given to the Government of Germany.

The Convention of 1845

On February 23, 1843, the subject of an extradition agreement was brought to the attention of Secretary of State Webster by the Minister Resident of Prussia, Baron Friedrich Ludwig von Roenne, who wrote as follows (D.S., 1 Notes from the Prussian Legation):

> By your kind permission I beg leave to recur to the subject of our conversation of this morning. Since the facilities of communication between this country and Europe have become so great and numerous, it happens more frequently than ever, that persons who have committed crimes in Germany seek refuge in the United States and vice versa. This is more particularly the case with regard to functionaries having charge of public monies, and to merchants who have defrauded their creditors, by which the revenue and the commerce of the two countries are seriously injured. To guard against this evil, as far as the United States and Great Britain are concerned, the tenth article of the treaty [1] lately concluded between the two countries, contains a provision for the mutual delivery of persons, charged with certain crimes. Would the United States be willing to enter into a similar agreement with Prussia and the States forming the German Custom-Union? If so, it would be desirable to add to the list of crimes mentioned in the 10th article of the treaty above alluded to, the crimes of fabricating or

[1] The Webster-Ashburton Treaty of August 9, 1842 (Document 99).

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fraudulently altering documents, fabricating and circulating counterfeit money (both coin and paper-money) and fraudulent bankruptcy.

Should the United States be willing to enter into any agreement of the kind, I beg leave to suggest, that it might be well, in order to avoid unnecessary delay, to send full powers to that effect to the United States' Minister at Berlin, as I contemplate availing myself this spring of a leave of absence, granted to me by my Government, to go to Europe.

Webster answered a week later to the effect that President Tyler was "inclined to consider quite favorably, the subject which you have caused to be brought to his notice" and requested a conference on the matter (D.S., 6 Notes to German States, 80–81, March 2, 1843); following that conference of March 9, Von Roenne transmitted a project with this note of the same date (D.S., 1 Notes from the Prussian Legation):

Baron Roenne presents his respects to the Honorable Mr Webster and begs leave to enclose the "projet" of a Convention drawn up in conformity with what passed between Mr Webster and Baron Roenne in their conversation of this morning. As Mr Webster thought, that the President would agree to stipulate for the delivery of persons charged with the defalcation and embezzlement of public monies, this being also declared punishable by the non-repealed section of the Subtreasury-Act,[1] Baron Roenne has added it to the list of the crimes. He takes the liberty to repeat his suggestion, that, should the President determine to negotiate the Convention, it would be desirable, that the United States' Minister in Berlin should be provided with full powers to that effect.

With three or four quite immaterial drafting changes the project submitted was found acceptable (D.S., 6 Notes to German States, 82, March 16, 1843); the resulting instruction of March 16, 1843, to Henry Wheaton, Minister to Prussia (enclosing a full power of the same date; D.S., 3 Credences, 34), and the text of the draft convention, follow (D.S., 14 Instructions, Prussia, 46–50):

I transmit, herewith, copies of a correspondence between this Department and Baron Rõenne, His Prussian Majesty's Minister Resident to this Government, on the subject of a convention between the two Powers for the extradition of criminals, fugitive from justice, in certain cases.

This correspondence has resulted in an agreement for such a convention, in a form which you will receive herewith. If this should prove acceptable to Prussia, in her own behalf, and in behalf of the other States concerned, you will sign it, on the part of the United States; for which purpose a full power is herewith transmitted.

Mere matters of formality, such as the description of the negotiators, &c., &c., you will of course alter and accommodate to circumstances; but the articles themselves, having been considered here, are not to be altered without further reference to this Government.

It is proper to add, that the Prussian Minister informs us that his instructions on this subject have extended no further than to direct him to inquire into the disposition of the Government of the United States in regard to it; so that if objections should arise, or difficulties occur, on the part of Prussia and the other States, leading to a postponement of the arrangement, or even its abandonment, such postponement or abandonment will not be regarded by the Government of the United States as a departure from any fixed understanding between the two Powers.

[1] Section 17 of the act of July 4, 1840 (5 Statutes at Large, 389), and the act of August 13, 1841 (*ibid.*, 439–40).

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[Enclosure]

Convention for the mutual delivery of criminals, fugitive from justice, in certain cases, concluded between the United States, on the one part, and Prussia and the States composing the German Customs'-Union, on the other part.

Whereas it is found expedient, for the better administration of justice, and the prevention of crime within the territories and jurisdiction of the two parties, respectively, that persons committing certain heinous crimes, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; and whereas it is expedient to enumerate such crimes explicitly, in order that constructive offences, and political crimes, may be excluded: Therefore, the United States of America, on the one part, and His Majesty the King of Prussia, on the other part, in his own name, as well as in the name of the other Powers, Members of the Germanic Union of Customs and Commerce, existing in virtue of the treaties of ———— that is to say, Their Majesties the King of Bavaria, &c, &c, ————, having resolved to treat on this subject, have, for that purpose, appointed their respective Plenipotentiaries, to negotiate and conclude a Convention; that is to say: The President of the United States has, on his part, appointed Henry Wheaton, Esquire, ————, and His Majesty the King of Prussia, on the other part, in his own name, as well as in the name of the other Powers, Members of the German Union of Customs and Commerce, N.N., who, after reciprocal communication of their respective full powers, have agreed to and signed the following articles:

ARTICLE I.

It is agreed that the United States and Prussia, and the other States of the aforenamed German Union of Customs and Commerce, shall, upon mutual requisitions by them or their Ministers, Officers, or Authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money—whether coin or paper money—or the defalcation or embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found, within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper Executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

In the event of other German States joining the Germanic Union of Customs and Commerce, it is hereby agreed, that such other States shall be included in all the stipulations of the present convention.

ARTICLE III.

The present convention shall continue in force until the 1st of January, 1849; and if neither party shall have given to the other six months' previous notice that the present convention shall cease on that day, then it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of its intention to terminate the same; each of the high contracting parties reserving to itself the right of giving such notice to the other, at any time after the expiration of the said first day of January, 1849.

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ARTICLE IV.

The present convention shall be duly ratified, and the mutual exchange of ratifications shall take place in Berlin, within ———— months from the date hereof, or earlier, if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Convention, and have hereunto affixed our seals.

Done, in duplicate, at Berlin, ————.

Regarding the wording of Article 1 of the foregoing draft, it is to be observed that, with an increased list of extraditable offenses, it is taken from Article 10 of the Webster-Ashburton Treaty of August 9, 1842 (Document 99); and Article 1 of this convention of 1852 is to the same effect.

There was some delay at Berlin, as the Prussian Government found it necessary to consult other German states and as the plan had to be critically examined by the Department of Justice in each state proposed to be included; Wheaton so reported under date of February 20, 1844 (D.S., 3 Despatches, Prussia, No. 238); and with that despatch Wheaton enclosed a note of the Prussian Minister of Foreign Affairs, Baron Heinrich Ulrich Wilhelm von Bülow, proposing four changes in the draft; these were (*a*) to name the contracting German states; (*b*) to permit the accession of other German states; (*c*) and (*d*) to add clauses corresponding to Articles 3 and 4 of the 1852 convention. Wheaton felt himself authorized by his instructions to agree to the first of these but asked for instructions regarding the others; but he wrote very expressly, both in the despatch cited and in a note of February 19, 1844, to Von Bülow, a translation whereof from the French is an enclosure to the despatch, that he saw no objection to them. The note of Von Bülow (February 17, 1844) was in these terms (revised translation from the French):

Mr. Roenne, Minister Resident of Prussia to the United States of North America, communicated last year to the King's Ministry a draft convention for the reciprocal extradition of fugitive criminals, concerted between himself and the Secretary of State, for Prussia and possibly also for the other German states associated in customs matters on the one hand, and for the United States on the other hand.

The Prussian Government takes pleasure in recognizing the cordiality with which that of the United States lent itself to the taking of measures to the end that in the future persons who have committed some grave crime may still be sought for and punished when they have been able to escape arrest by flight to an overseas country. It would undoubtedly have preferred that the draft convention should have admitted also into the number of crimes for which extradition can be asked, fraud and theft. But the King's Ministry is ready also to adhere to the convention in the limits which have been given to it.

The Government of the United States offered to extend the convention to all the states forming the German Customs Union, while stipulating at the same time that if later still other states should come into this Customs Union, the said convention would be deemed to have been concluded with them also. However appreciative the Prussian Government may have been of this kind offer, the position in which the treaties place Prussia *vis-à-vis* the other states of the Union, nevertheless, did not allow her to treat on her own account on their behalf in a matter which does not concern the common interest of the Union in customs matters. It has therefore been necessary to communicate first with each state separately in order to learn whether it was agreeable to it to be included in the arrangement in question. Consequently the Governments of Bavaria, of

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Württemberg, of the Kingdom of Saxony, of Electoral Hesse and of the Grand Duchy of Hesse, of the Grand Duchy of Baden and of that of Saxe-Weimar, of the Duchies of Saxe-Coburg-Gotha, Saxe-Altenburg, and Saxe-Meiningen, of the Duchy of Brunswick, of the Principalities of Nassau, of Schwarzburg-Sondershausen, and of Schwarzburg-Rudolstadt, of Reuss of the elder line and of the younger line, as well as of the free city of Frankfort, have declared that, adhering to the principles which dictated the draft convention, they consented that Prussia should sign it in their name but that they reserved to themselves the ratification thereof. Therefore it will be a question only of substituting in the preamble of the draft, for the words *members of the German Customs Union*, an enumeration of the various contracting states, of changing correspondingly the first lines of Article 1, and of giving another wording to the reservation contained in Article 2 by stating that the other German states in general shall have power to declare their adherence to the provisions of the convention, which from and after such declaration shall have full application to them.

As to the convention itself, it must be drawn up and signed in the German and English languages, and the undersigned proposes to set the time limit for the exchange of ratifications at three months.

Furthermore, the Prussian Government believes that it must presume that it is the intention of the Government of the United States:

1. That no one of the contracting parties shall be obliged to give up *its own subjects*. Such extradition to foreign courts would apparently be as incompatible with the legislation of the United States as with the legislations of Prussia and the other German states;

2. That when a fugitive has committed a new crime in the state where he has gone, his extradition cannot take place until the judicial investigation of this new crime is terminated and the convicted person has served his penalty.

These principles being generally recognized, it is a question only of knowing whether they should be inserted in the convention itself or whether it would not be sufficient that the contracting parties should reach an understanding on this subject, either by an exchange of notes or in a procès-verbal to be drawn up at the time of the signature of the convention or at the time of the exchange of ratifications.

While making the present communication to Mr. Wheaton, Envoy Extraordinary and Minister Plenipotentiary of the United States of North America, the undersigned avails himself of the opportunity to offer to him the assurance of his high consideration.

The next instruction to Wheaton on the subject, dated August 23, 1844, from Secretary of State Calhoun, contained this paragraph (D.S., 14 Instructions, Prussia, 85–86):

The President, to whom the subject has been submitted, does not perceive any sufficient objections to the alterations in the Convention suggested by the Prussian Minister of Foreign Relations; and has directed me, in case I concur with him, to authorise you to meet the views of Count Bulow. The President has entire reliance upon your ability and good judgment, and it is his wish that you should proceed, without delay, to carry out and to complete the arrangements in view, in such form and manner as, in your opinion, will best advance the interest of both countries.

The convention was accordingly signed at Berlin on January 29, 1845, and was transmitted with Wheaton's despatch No. 258, of that date, in which he wrote as a postscript (Senate Confidential Executive Document No. 2, 29th Congress, 1st session, 18 Regular Confidential Documents, 493; the original despatch is lacking):

I beg leave to add that, as the convention is subject to the ratification of each of the sovereigns and states of Germany therein enumerated, it will be necessary to transmit as many different ratifications, on our part, as there are parties to the convention on their part.

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The convention was received at the Department of State on March 21, 1845, after the incoming of the Polk administration and while the Senate was not sitting; in acknowledging the convention Secretary of State Buchanan made no comment on its terms, remarking that it would necessarily lie over until the next session of Congress (D.S., 14 Instructions, Prussia, 92–94, March 27, 1845).

The convention of 1845, of six articles, was signed in triplicate; one example is in the treaty file, written in English and German (not in German script; Treaty Series No. 295, although unperfected). It appears superfluous to print the text of the convention of 1845, as it differs very little from that of 1852; Articles 1 to 4 are almost word for word the same; in the earlier convention Article 5 has "1849" in lieu of "1858", and by Article 6 the time limited for the exchange was fifteen months; and the second "whereas" of the preamble of the 1852 convention is new. The parties of "the other part" in the 1845 convention were Prussia and the seventeen German states named in the note of Von Bülow of February 17, 1844 (printed above), plus "His Serene Highness the Prince of Reuss-Lobenstein-Ebersdorf", a personage who at the time, and until 1848, was sovereign of a portion of the lands of Reuss (see Almanach de Gotha, 1850, 61–62). Among the German states of the 1845 convention were Bavaria, Württemberg, and Baden, not signatories in 1852; the two Anhalt Duchies [1] and Waldeck, Lippe, and Hesse-Homburg, named in 1852, were not in 1845.

While the convention of 1845 had been deemed acceptable by Henry Wheaton, by Secretary of State Calhoun, and by President Tyler, Secretary of State Buchanan and President Polk objected to Article 3. The convention was submitted by President Polk to the Senate with a message of December 16, 1845; the accompanying correspondence included the instructions and despatches of 1843 and 1844 which have been previously cited (Senate Confidential Executive Document No. 2, 29th Congress, 1st session, 18 Regular Confidential Documents, 479–94). The text of the presidential message follows (Executive Journal, VII, 7–8):

> I herewith communicate to the Senate, for its consideration, a convention concluded and signed at Berlin on the 29th day of January, 1845, between the United States and Prussia, together with certain other German states, for the mutual extradition of fugitives from justice in certain cases; and I communicate with the convention the correspondence necessary to explain it.
>
> In submitting this convention to the Senate, I deem it proper to call their attention to the third article, by which it is stipulated that "none of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention."
>
> No such reservation is to be found in our treaties of extradition with Great Britain [2] and France,[3] the only two nations with whom we have concluded such treaties. These provide for the surrender of all persons who are fugitives from justice without regard to the country to which they may belong. Under this article if German subjects of any of the parties to the convention should commit crimes within the United States and fly back to their native country from justice they would not be surrendered. This is clear in regard to all such Germans as

[1] There were three Anhalt Duchies existing in 1845.
[2] Article 10 of Document 99.
[3] Documents 103 and 112.

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shall not have been naturalized under our laws. But even after naturalization difficult embarrassing questions might arise between the parties. These German powers, holding the doctrine of perpetual allegiance, might refuse to surrender German naturalized citizens, whilst we must ever maintain the principle that the rights and duties of such citizens are the same as if they had been born in the United States.

I would also observe that the 4th article of the treaty submitted contains a provision not to be found in our conventions with Great Britain and France.

In the Senate there was the usual reference to committee and order to print; these were repeated soon after the commencement of each of the two following sessions of Congress, without other action in the meantime (Executive Journal, VII, 8, December 18, 1845; *ibid.*, 167, December 22, 1846; *ibid.*, 278, January 3, 1848; the respective Senate prints are Senate Confidential Executive Document No. 2, 29th Congress, 1st session, 18 Regular Confidential Documents, 479–94; Senate Confidential Executive Document No. 3, 29th Congress, 2d session, 18 Regular Confidential Documents, 1195–1209; Senate Confidential Executive Document No. 3, 30th Congress, 1st session, 23 Regular Confidential Documents, 37–51). During this period (on March 3, 1847) the Senate, on the proposal of the Committee on Foreign Relations, unanimously voted to delete from the extradition convention signed with Switzerland at Paris on September 15, 1846, a phrase to the effect that the parties were not required to deliver up their respective citizens (Executive Journal, VII, 237; that convention is Unperfected N3; see the notes to Document 144, in vol. 5, pp. 903–4). On February 16, 1848, the convention of 1845 with Prussia and other German states was reported from committee with an amendment to enlarge the time allowed for exchange of ratifications from fifteen to forty-four months from signature, an extension from April 29, 1846, to September 29, 1848; with this, the convention was unanimously accepted by the Senate on June 21, 1848, the procedure including three roll calls (Executive Journal, VII, 300, 433–34).

The action of the Senate has been variously explained; Buchanan wrote (August 3, 1848) that the convention of 1845 "was most unexpectedly taken up, and, in the hurry of business, suddenly acted upon by the Senate; and no doubt is entertained that the views presented by the President in his message, will receive the approbation of the members of that Body" (D.S., 14 Instructions, Prussia, 126–27; printed in Moore, Works of James Buchanan, VIII, 150–51). The explanation of Buchanan, however, is not wholly satisfactory; at least it does not account for the report of the Committee on Foreign Relations of February 16, 1848.[1] Polk wrote that the Senate's action "was brought about by the personal influence of the Baron Gerolt, the Prussian Minister, with Senators" (Diary of James K. Polk, IV, 18–19, July 15, 1848); and this finds some confirmation in a despatch of Von Gerolt (No. 23) of June 19, 1848, only two days before the

[1] At the time that committee was composed of three Democrats, Ambrose H. Sevier, of Arkansas, Chairman; Thomas H. Benton, of Missouri; and Edward A. Hannegan, of Indiana; and two Whigs, Willie P. Mangum, of North Carolina; and Daniel Webster, of Massachusetts.

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action of the Senate. Therein Von Gerolt wrote to the King of Prussia that he was "yesterday" informed that the Senate would take up the convention at an early date and that because of repeated assurances which he had received during the session from the most influential Senators he did not doubt that the majority would vote for ratification (facsimiles in the Library of Congress, Ministerium der Auswärtigen Gelegenheiten, Ausw. Amt Central-Bureau Abteilung I C Amerika No. 10).

It may be surmised that Von Gerolt had communicated to Senators his lengthy note on the subject, of May 20, 1847 (printed below), which was not officially before the Senate. In 1851 Von Gerolt wrote on the subject as follows (D.S., 2 Notes from the Prussian Legation, excerpt from an unsigned and undated paper headed "Synopsis"; this is now bound between two notes respectively of December 9 and 16, 1851, and is probably of that month):

This objection, as stated in President's Polk message of the 16 December 1845 was made on the supposition, that Prussia and the other german States, who are parties to that treaty hold the doctrine of perpetual allegiance for its subjects and might refuse to deliver up German naturalized citizens, whilst the U.S. Government must maintain the principle that the right and duties of such citizens are the same as if they had been born in the United States.

After due consideration of this subject and having been shown, that the laws of Prussia etc. do not hold such doctrine of perpetual alligiance and that *all* naturalized American citizens born in Prussia etc. as well as *all* german emigrants in the U.S. who have not yet become American citizens, according [to] the Prussian law of 31 December 1842,[1] must be surrendered under the foresaid Treaty of extradition, the Senate in its Session of the 21 June 1848 gave its aprobation [to] the said treaty with unanimity.

In 1847, and thus after the term of fifteen months fixed for the exchange of ratifications had ended, but while the convention of 1845 was still in the Senate, there were further but futile exchanges between the two Governments; neither would yield its position in respect of Article 3. Conversation on this and other subjects is recorded in a protocol of February 23, 1847; only this final paragraph thereof is here relevant (D.S., treaty file No. 294; printed in Moore, Works of James Buchanan, VII, 224–26; cf. a briefer statement in the "Pro memoria" of February, received from Von Gerolt February 18, 1847, in D.S., 1 Notes from the Prussian Legation):

The conversation having been directed to the Convention concluded on the 29th January, 1845, between the United States on the one part, and Prussia and the other States of the Germanic Confederation on the other part for the mutual delivery of criminals, fugitives from justice, Mr Buchanan stated his objections to the third Article of that Convention, which declares that, "none of the contracting parties shall be bound to deliver up its own citizens or subjects, under the stipulations of this Convention". He said, that if this Article were omitted, the Convention would then conform to the Conventions for extradition already concluded with Great Britain and France, and would receive the approbation of the President. He further suggested, that the two Governments might agree to extend the time for the exchange of ratifications: and that if the Prussian Government would previously intimate its consent to the omission of the third Article from the Convention, then it would doubtless be amended in this manner

[1] Gesetzsammlung für die königlichen preussischen Staaten, 1843, No. 2319, pp. 15–18.

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and confirmed by the Senate of the United States: and the ratifications of the Convention thus amended by the Senate, could afterwards be exchanged between the parties. He further expressed his willingness immediately to conclude with Mr Gerolt, a new Convention, if he possessed the requisite powers from his Government, embracing all the provisions contained in that of the 29th January, 1845, with the exception of the third Article. To this, Mr Gerolt observed, that he had no powers to conclude such a Convention, but would submit the propositions of Mr Buchanan to the Prussian Government for further instructions.

Von Gerolt then sought and obtained instructions from Berlin, as a result of which he wrote this note of May 20, 1847 (revised translation from the French; the original, with a translation, is in D.S., 1 Notes from the Prussian Legation; another manuscript translation is in 2 *ibid.*, preceding a note of December 9, 1851):

The undersigned Minister Resident of His Majesty the King of Prussia, having submitted to his Government the protocol of the conference which he signed with the Honorable Mr. Buchanan, Secretary of State of the United States, on February 23 of this year, and advised His Majesty's Government of the objections which the Government of the United States raised to the ratification of the treaty concluded between the Plenipotentiaries of Prussia and most of the other states of the Zollverein on the one hand, and the United States on the other hand, for the extradition of the respective criminals in certain cases, has just received the order to call to the attention of the Honorable Mr. Buchanan the following reflections relating to this subject:

Article 3 of the said convention, which gave rise to the above-mentioned opposition, was introduced on the consideration that the legislation of Prussia and the other German states, as well as of almost all nations, is opposed to delivering their own subjects or citizens to the jurisdiction of another nation; and this article was adopted by the Plenipotentiary of the United States only after having requested and received instructions on this subject from the Secretary of State of the United States under date of August 23, 1844. The American Plenipotentiary therefore acted in conformity with his instructions in agreeing to Article 3 of the said treaty, and the Governments of Prussia and the other contracting states had the right to expect, in accordance with the general principles of international law, that the treaty would be ratified by the United States.

As to the objections themselves which were raised by the Government of the United States to Article 3, it is true that that article is not contained in the extradition treaties of the United States with Great Britain and France; but it appears to be understood that those nations have not thereby contracted the obligation of delivering up their own subjects to the American authorities, since their constitution and their legislation forbid them to surrender them to a foreign jurisdiction. Hence there is only an apparent difference on this point between those treaties and the one of January 29, 1845, concluded between Prussia and the United States; the latter expresses clearly, in Article 3 thereof, that which is understood in the treaties with England and France.[1]

With regard to the objection made against the difficulties that the principle of perpetual allegiance[2] in the states of Germany would under Article 3 oppose to the extradition of German criminals who had taken refuge in Germany after committing in the United States crimes designated in the treaty in question, the undersigned has the honor to observe to the Honorable the Secretary of State that there is no perpetual allegiance between the states of Germany and their subjects; that on the contrary almost all Germans who emigrate or change their domicile to the United States receive upon their request a certificate of emigration (in Prussia, under the law[3] of December 31, 1842), whereby they are discharged

[1] All this is quite mistaken so far as it refers to the treaty with Great Britain (Article 10 of Document 99); however, in respect of the convention with France (Documents 103 and 112), it fairly well states the view subsequently put forward by the French Government (see Moore, Extradition, I, 170–72).

[2] French, *alliance*.

[3] Cited previously.

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from their obligations to the state and lose their citizenship, and those who go to the United States without submitting to this formality also generally have an interest in obtaining American citizenship, whereby they at once lose their original nationality, as they do also by an absence of a certain number of years from their native country.

In all these cases the fugitives in question, on returning to their country of birth, will be considered legally as foreigners and accordingly delivered to the jurisdiction of the United States under the treaty of extradition.

Hence it will happen very rarely that an individual who is a native of one of the contracting German states, having committed a crime in the United States, can take refuge in Germany without being surrendered on the demand of the American Government; for that it would be necessary for him to have kept his citizenship and to be on the territory of the German state in which he possesses his citizenship. But even in that case he would not escape punishment, because the legislation of the states of Germany prosecutes and punishes crimes committed in foreign countries as soon as the necessary proofs, that is, the legal depositions of witnesses, have been submitted.

In accordance with these explanations the Government of the United States may be satisfied that in *no case* would the fugitive criminals in question, who have committed in the United States one of the crimes designated in the treaty of extradition, be able to escape their punishment, which is the purpose of this treaty.

The same is not true with respect to crimes committed in Germany, for which the authors thereof who have taken refuge in the United States cannot be punished under the laws; on the other hand, if the Constitution and the laws of the United States permit it to deliver its own citizens to a foreign jurisdiction, the legislation in Prussia and in the other states of Germany opposes in principle the extradition of their own subjects.

This difference in the institutions and the laws of the two countries has rendered necessary the introduction of Article 3 into the treaty in question in order to accomplish the reciprocal aim for which it was concluded, that is, that crimes committed in the respective countries by individuals who have taken refuge on the territory of one of the contracting parties may not escape the laws; the moral effect of this convention among the large populations of Germany and the United States should contribute powerfully to prevent a large number of crimes designated in Article 1 of the treaty of January 29, 1845, and it would be deplorable for the interests of the two countries if the Government of the United States insisted upon renouncing the great benefits of this treaty on account of Article 3, the objections to which have been refuted and which the contracting states of Germany cannot waive for the above-indicated reason.

The undersigned therefore requests the Honorable the Secretary of State to submit to His Excellency the President, for his consideration, the reasons that he has presented in this note in favor of Article 3 of the treaty and to be good enough to express to His Excellency the hope of the Prussian Government that the Government of the United States, considering the impossibility which the Constitution and laws of Prussia and the other German states oppose to the deletion of the above-mentioned article, will not insist upon refusing the ratification of the treaty in question as signed by the respective Plenipotentiaries.

But argument did not change the attitude of the Polk administration; the President, notwithstanding the action of the Senate, declined to ratify the convention of 1845, which accordingly failed; there was sent to the Senate an explanatory message of July 28, 1848, which was in large part written by Buchanan (see Diary of James K. Polk, IV, 18–19, 28, 33, July 15, 25, and 28, 1848). The text here (from Executive Journal, VII, 462–64) is followed by the memorandum of Buchanan of the previous July 6, which was its basis (Senate Confidential Executive Document No. 12, 30th Congress, 1st session, 23 Regular Confidential Documents, 507–17; no copy of that report has been found in the archives of the Department of State, and it

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appears not to have been heretofore printed except in the Senate document; for an earlier expression of the views of Buchanan, see his instruction to Richard Rush, Minister at Paris, of September 25, 1847, in D.S., 15 Instructions, France, 55–58; printed in Moore, Works of James Buchanan, VII, 419–21):

I have received from the Senate the "convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded on the 29th of January, 1845, between the United States, on the one part, and Prussia and other states of the German Confederation, on the other part," with a copy of their resolution of the 21st of June last, advising and consenting to its ratification, with an amendment extending the period for the exchange of ratifications until the 28th of September, 1848.

I have taken this subject into serious and deliberate consideration, and regret that I cannot ratify this convention, in conformity with the advice of the Senate, without violating my convictions of duty. Having arrived at this conclusion, I deem it proper and respectful, considering the peculiar circumstances of the present case, and the intimate relations which the Constitution has established between the President and Senate, to make known to you the reasons which influence me to come to this determination.

On the 16th of December, 1845, I communicated this convention to the Senate for its consideration, at the same time stating my objections to the third article. I deemed this to be a more proper and respectful course towards the Senate, as well as towards Prussia and the other parties to it, than if I had withheld it and disapproved it altogether. Had the Senate concurred with me in opinion and rejected the third article, then the convention thus amended would have conformed to our treaties of extradition with Great Britain and France.

But the Senate did not act upon it within the period [1] limited for the exchange of ratifications. From this I concluded that they had concurred with me in opinion in regard to the third article, and had, for this and other reasons, deemed it proper to take no proceedings upon the convention. After this date, therefore, I considered the affair as terminated.

Upon the presumption that this was the fact, new negotiations upon the subject were commenced, and several conferences were held between the Secretary of State and the Prussian minister. These resulted in a protocol [2] signed at the Department of State on the 27th of April, 1847, in which the Secretary proposed either that the two Governments might agree to extend the time for the exchange of ratifications and thus revive the convention, provided the Prussian Government would previously intimate its consent to the omission of the third article, or he "expressed his willingness immediately to conclude with Mr. Gerolt a new convention, if he possessed the requisite powers from his Government, embracing all the provisions contained in that of the 29th January, 1845, with the exception of the third article. To this Mr. Gerolt observed that he had no powers to conclude such a convention, but would submit the propositions of Mr. Buchanan to the Prussian Government for further instructions."

Mr. Gerolt has never yet [3] communicated in writing to the Department of State the answer of his Government to these propositions; but the Secretary of State, a few months after the date of the protocol, learned from him, in conversation, that they insisted upon the third article of the convention as a sine qua non. Thus the second negotiation had finally terminated by a disagreement between the parties, when more than a year afterwards, on the 21st June, 1848, the Senate took the original convention into consideration and ratified it, retaining the third article.

[1] Fifteen months, ending April 29, 1846.

[2] Of February 23, 1847, quoted in part above.

[3] This statement was a "mistake" which "originated in the Department of State" and which, "as soon as it was discovered, was made known to the Chairman of the Committee of Foreign Relations of the Senate", then Edward A. Hannegan, of Indiana (see Moore, Works of James Buchanan, VIII, 150–51); the note of Von Gerolt of May 20, 1847, which is printed above, had been overlooked.

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After the second negotiation with the Prussian Government, in which the objections to the third article were stated, as they had been previously in my message of the 16th December, 1845, a strong additional difficulty was interposed to the ratification of the convention; but I might overcome this difficulty if my objections to the third article had not grown stronger by further reflection. For a statement of them in detail I refer you to the accompanying memorandum [1] prepared by the Secretary of State by my direction.

I cannot believe that the sovereign States of this Union, whose administration of justice would be almost exclusively affected by such a convention, will ever be satisfied with a treaty of extradition under which if a German subject should commit murder or any other high crime in New York or New Orleans, and could succeed in escaping to his own country, he would thereby be protected from trial and punishment under the jurisdiction of our State laws which he had violated. It is true, as has been stated, that the German states, acting upon a principle springing from the doctrine of perpetual allegiance, still assert the jurisdiction of trying and punishing their subjects for crimes committed in the United States or any other portion of the world. It must, however, be manifest that individuals throughout our extended country would rarely, if ever, follow criminals to Germany, with the necessary testimony, for the purpose of prosecuting them to conviction before German courts for crimes committed in the United States.

On the other hand, the Constitution and laws of the United States, as well as of the several States, would render it impossible that crimes committed by our citizens in Germany could be tried and punished in any portion of this Union.

But if no other reason existed for withholding my ratification from this treaty, the great change which has recently occurred in the organization of the Government of the German states would be sufficient. By the last advices we learn that the German Parliament, at Frankfort, have already established a federal provisional executive for all the states of Germany; and have elected the Archduke John of Austria to be "Administrator of the Empire." One of the attributes of this executive is "to represent the Confederation in its relations with foreign nations, and to appoint diplomatic agents, ministers, and consuls." Indeed, our minister at Berlin has already suggested the propriety of his transfer to Frankfort.[2] In case this convention with nineteen of the thirty-nine German states should be ratified, this could amount to nothing more than a proposition on the part of the Senate and President to these nineteen states who were originally parties to the convention to negotiate anew on the subject of extradition. In the mean time a central German Government has been provisionally established, which extinguishes the right of these separate parties to enter into negotiations with foreign Governments on subjects of several interest to the whole.

Admitting such a treaty as that which has been ratified by the Senate to be desirable, the obvious course would now be to negotiate with the General Government of Germany. A treaty concluded with it would embrace all the thirty-nine states of Germany, and its authority being co-extensive with the Empire, fugitives from justice found in any of these states would be surrendered up on the requisition of our minister at Frankfort. This would be more convenient and effectual than to address such separate requisitions to each of the nineteen German states with which the convention was concluded.

I communicate herewith, for the information of the Senate, copies of a dispatch from our minister at Berlin, and a communication from our consul at Darmstadt.[3]

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[1] Printed below immediately following the message.

[2] Andrew J. Donelson was at the time Minister to Prussia; on August 9, 1848, he was commissioned Envoy Extraordinary and Minister Plenipotentiary of the United States of America to the Federal Government of Germany (D.S., 3 Credences, 253); in an instruction of September 18, 1849, the decision that the mission "ought for the present, at least, to be suppressed" was communicated with a letter of recall (D.S., 14 Instructions, Prussia, 171–73).

[3] Those two despatches, of June 30 and July 3, 1848, respectively, dealt with events at Frankfort. Each of them was communicated only in part (see Senate Confidential Executive Document No. 12, 30th Congress, 1st session, 23 Regular Confidential Documents, 507–17).

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MEMORANDUM

For the President, relating to the Convention of Extradition with Prussia and certain other German States.

The Secretary of State respectfully submits his views to the President on the subject of the Convention of Extradition between the United States and Prussia, with other States of the Germanic confederation. His sincere and habitual deference for the Senate renders it painful for him to express any opinion in opposition to their advice to the President to ratify this convention; and he would shrink from the task, if this could be done without violating his own strong and clear sense of duty.

The first and only treaty stipulation for extradition which this government had ever concluded before 1842, is contained in the 27th article of our treaty with Great Britain of the 19th November, 1794, commonly called Jay's treaty.[1] This article rests upon the correct presumption that crimes are in their nature local, and ought to be tried and punished within the jurisdiction of the State or nation where they are committed. For this reason, under the 27th article of the treaty of 1794, all fugitives from justice, no matter what may have been their national character, were to be delivered up by the governments of the respective parties. The treaty extends "*to all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other.*" It was the fugitive from justice, without regard to the country of his birth, or that to which he owed allegiance, who was to be delivered up that he might be tried, and, if found guilty, punished under the laws which he had violated. If a citizen of the United States had crossed the Canada line, and committed murder or forgery in a British province, he was to be surrendered to the jurisdiction under which alone he could be tried; and so, *vice versa*, in regard to a British subject who had committed either of these crimes within any of the States of the American Union. No exception was made by this treaty in favor of fugitives from justice who were citizens or subjects of the respective parties. Indeed, if this had been done, it would, in a great degree, have defeated the object of the treaty, and rendered it nugatory.

Jay's treaty was abrogated[2] by the war of 1812 with Great Britain, and no other provision for extradition existed between the parties until the conclusion of the treaty of Washington, on the 9th August, 1842. A convention for extradition was also concluded with France[3] on the 9th of November, 1843. These are the only treaties now in existence on the subject of extradition; and both of them, pursuing the precedent which had been established in Jay's treaty, extend the extradition "to all persons who, being charged" with the crimes therein respectively enumerated, within the jurisdiction of either, "shall seek an asylum or shall be found within the territories of the other." Under these treaties, if a British subject, or a French citizen, should commit murder, or any other of the enumerated crimes, within the jurisdiction of one of our sovereign States, and escape to Great Britain or France, he would be surrendered up for trial and punishment to the authorities of that State where the crime had been committed. Have not the States of this Union a right to expect such a provision, in aid of their criminal justice, in all future treaties of extradition which we may conclude?

The convention of Prussia and the other German States with the United States. adopts an entirely different principle. Its third article declares, that "none of the contracting parties shall be bound to deliver up its own citizens or subjects, under the stipulations of this convention." Thus, if a subject of any one of the nineteen contracting German States should commit murder, or any other enumerated crime, in New York, Pennsylvania, or Ohio, and should succeed in making his escape to his own country, he would be shielded by this treaty against a demand made for his surrender by the United States, in behalf of these States.

[1] Document 16.

[2] Various articles of the Jay Treaty, including Article 27, which was the extradition article, were, by Article 28 of that treaty, limited in their duration to October 28, 1807, at the latest; those articles were deemed to have ended on October 1, 1803 (see American State Papers, Foreign Relations, III, 90).

[3] Document 103; see also Document 112.

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After a full and careful consideration of the subject, you expressed, in the message [1] communicating the convention to the Senate, on the 18th December, 1845, a very strong and decided opinion against the third article. As you had, at the time, no objection to the other articles of the convention, this was clearly the proper course to pursue. Had the Senate thought proper to strike out the third article, there would then have been a concurrence of opinion between that body and the President; and the convention, thus amended, would have been ratified on the part of this government, and submitted to the Prussian and other German governments for their approval and ratification.

But the Senate did not make any decision upon the convention within the period limited for the exchange of ratifications, (the 29th April, 1846;) consequently, the negotiation was believed, after this day, to be at an end.

It was again resumed in February, 1847, as appears by a protocol [2] dated on the 27th of that month, and signed at the Department of State by the Prussian minister and the Secretary of State. Your objections to the third article were therein reiterated by the Secretary; and, under your instructions, it was suggested "that the two governments might agree to extend the time for the exchange of ratifications; and that, if the Prussian government would previously intimate its consent to the omission of the third article from the convention, then it would doubtless be amended in this manner and confirmed by the Senate of the United States; and the ratifications of the convention, thus amended by the Senate, could afterwards be exchanged between the parties. The Secretary of State further expressed his willingness immediately to conclude with Mr. Gerolt a new convention, if he possessed the requisite powers from his government, embracing all the provisions contained in that of the 29th January, 1845, with the exception of the third article. To this, Mr. Gerolt observed that he had no powers to conclude such a convention, but would submit the propositions of Mr. Buchanan to the Prussian government for further instructions."

These propositions were accordingly submitted to the Prussian government by Mr. Gerolt, and they still adhered to the third article as a *sine qua non*. After this, it was confidently believed that the whole affair had finally terminated, unless that government should reconsider its determination and agree to accept the convention without this article.

The Senate of the United States, however, on the 21st June, 1848, took the subject into consideration, and advised and consented to the ratification of the convention, retaining the third article. They also adopted an amendment extending the time for the exchange of ratifications until the 28th [*29th*] September, 1848.

It is now respectfully suggested that this convention ought not to be ratified by the President: 1st, because of the retention of the third article; and, 2d, because there has recently been such a change in the political condition of the German States which are parties to it, as would render its ratification inexpedient—at least for the present.

1. The claim asserted by Prussia and the other German States to exempt their own subjects from extradition, is a branch of the doctrine of perpetual allegiance. Upon this principle, they assume the jurisdiction of punishing their own subjects for crimes committed in any quarter of the globe. For this very reason, they allege that we will have no just cause of complaint, should the third article be retained; because their subjects, who may have sought an asylum within their own country, will be tried and punished by the respective German States for crimes committed within the several States of this Union. It is possible that this power may be efficiently exerted, under their treaties of extradition with each other, among the neighboring States of which the Germanic confederacy is composed; but when it is applied to crimes committed within a country so remote and so extensive as the United States, it would be a mere mockery. Who would ever think of collecting the testimony in Wisconsin or Iowa necessary to convict a German subject of murder, or other crime, committed within those States, and carrying it to the principality of Reuss Greitz or Reuss Schleitz, there to prosecute the fugitive to conviction and punishment?

But, it may be argued that the third article is mutual in its provisions, and if German subjects are not to be surrendered up by their governments, neither are

[1] Of December 16, 1845, read in the Senate two days later.
[2] Of February 23, 1847, the relevant portion of which is printed above.

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American citizens by the government of the United States. But is this an advantage to the several States of our Union? Would they desire that their citizens, who had committed flagrant crimes in Germany, should be exempt from all punishment, merely because they had successfully eluded the pursuit of justice and escaped to their own country? Are these the members of society which they would desire to take to their bosom and screen from punishment? It is very certain that, no matter how atrocious their crimes may have been, if they were committed in Germany, they could never be tried and punished in any of the States of this Union. Our citizens go over the whole world, wherever business or pleasure may lead them, and are, whilst abroad, subject to the criminal jurisdiction of the country against whose laws they offend, and to no other; although we always protect them against injustice from any foreign power.

But the third article, although it may be reciprocal in terms, is not so in fact. Considering the immense emigration from all parts of Germany to the United States, the chances are, that a far greater number of German fugitives from the justice of the several States of this Union will seek an asylum in their native land, than the number of American citizens who will be fugitives from Germany to the United States. Under such circumstances, would the States of this Union, if the question could be submitted to them, consent to enter into treaties of extradition, under which all the crimes committed by foreigners, within their limits, should go unpunished, provided the criminals could escape to their native land?

It may be questioned whether the provisions of the third article are fair towards the two other nations with which we have already treaties of extradition. Why should we agree to deliver up to the justice of the German States an Englishman or a Frenchman, and refuse to surrender one of our own citizens, even although he may have been a party to the very same crime with which the former is charged? Such will be the effect of the present convention, should it be ratified.

We have received overtures from other nations on the continent of Europe, to conclude treaties of extradition; but they all refuse to surrender their own subjects. If this convention should be ratified, it will be a precedent, and will impose an obligation on the President to conclude similar treaties with other powers. We may then have treaties of extradition with all the nations of the continent, France excepted, under which no fugitives from the justice of the several States of this Union, if they should make their escape across the Atlantic, will be delivered up by their respective governments. The facilities for doing this are now so great, that such cases must often occur.

2. The condition of the States of the Germanic confederation, as they existed under the treaty of Vienna, has undergone great changes since the period of the French revolution. Had this convention gone into effect under the old confederation, it would have been exceedingly difficult to execute its provisions. This consisted of thirty five independent sovereignties and four free cities, each possessing the power to treat with foreign nations. The present convention would have been in fact a treaty with each one of eighteen sovereign States and one free city; and, according to Mr. Wheaton, it will be necessary to transmit nineteen ratified copies of this convention to Berlin, and receive as many in exchange. And when all this was accomplished, we should then have had treaties of extradition with less than one-half of the German States, leaving the remainder interspersed over the whole surface of Germany. Of course, if we had pursued a fugitive from justice into one of the small States embraced by the convention, he could have effectually eluded our pursuit by making his escape into another German State not included in its provisions. The facility with which this could be accomplished, must appear evident from the fact that many of these States are much smaller than our common counties. Several of them contain but from sixteen to two German square miles, and embrace a population of only 72,050 down to 31,500. In addition, it may be stated, that out of the whole nineteen States which have entered into this convention, we have a foreign minister in Prussia alone; and in most of them there is not even an American consul to make the requisitions under the convention, in the name of the United States, for the extradition of fugitives from justice.

But there is now a German convention or parliament in session at Frankfort, composed of deputies elected by the people of all the German States, for the

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purpose of establishing a federal union among the whole. One great object of this assembly is to remove difficulties which have been experienced in consequence of the number of States, all possessing the power to treat with foreign nations. There is now a fair prospect that Germany will be speedily united in its foreign relations, and that the central government will possess the power of making and executing treaties which shall bind all the States. The constitution reported by Mr. Dalhman,[1] who was deputed by the government of Prussia to attend the meeting at Frankfort, preliminary to the opening of the convention, contains a provision to accomplish this long desired purpose. That august body, representing all Germany, has already adopted two important resolutions: the one, that every article in the constitutions of the several German States, in conflict with the federal constitution when adopted, shall be annulled; and the other, the appointment of a committee of fifteen to report without delay the best plan for establishing a provisional executive power until the federal constitution shall go into operation. It is therefore highly probable that before the ratifications of the present convention could be exchanged, the German States which are parties to it will be deprived of all jurisdiction over the subject.

It is thus evident, that by waiting for a brief period we may probably be able to conclude a treaty of extradition (as well as a commercial treaty) with the Germanic federal government, which will possess the power of surrendering up fugitives found in any portion of Germany, just as our own government possesses the power to surrender up fugitives found in any portion of our Union. Our minister will, of course, be withdrawn from Prussia, and accredited to Frankfort; and then, instead of transacting with nineteen or thirty-nine different States, we shall obtain the surrender of fugitives from one general government.

It is, to say the least, very doubtful whether these States, in their separate character, at the present moment, possess the power to ratify this convention; because it would, in fact, be a new convention offered to them since the German parliament commenced its session. So far as the German parties are concerned, it became a nullity on the 29th April, 1846, the last day provided for the exchange of ratifications. If we shall now, more than two years after that day, propose to them to revive it, and extend the period for the exchange of ratifications, this would, in fact, be equivalent to a new negotiation. In the mean time they have elected delegates to Frankfort, and clothed them with supreme power to make a constitution which shall deprive themselves of the authority of concluding treaties with foreign nations, and vest it in the general government. Under such circumstances, could they accede to our proposal? and even admitting their right, would they not be restrained from exercising it by a proper respect for the German Parliament? The Secretary ventures to affirm, without knowing the fact, that Baron Girolt has received no instructions from his government on this subject since the German States have determined to establish an efficient central government.

The Secretary might remark, if this were the appropriate occasion, that great embarrassments have occurred in the execution of our treaties of extradition both with France and England, and greater are anticipated. Whilst he cheerfully admits that criminals ought not to escape punishment, he foresees that these treaties may involve the general government in serious difficulties, not only with foreign nations, but with the several States composing this Union.

In view of all these considerations, he would respectfully suggest that the President withhold his ratification from the present convention, and direct the Secretary to make known the reasons for this determination to the Prussian government.

JAMES BUCHANAN.

DEPARTMENT OF STATE,
Washington, July 6, 1848.

THE FINAL NEGOTIATIONS

On the initiative of the Government of Prussia discussions were resumed during the Fillmore administration, while Daniel Webster

[1] Friedrich Christoph Dahlmann.

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was Secretary of State; after some conversation on the subject Von Gerolt wrote to Webster as follows on June 10, 1851 (D.S., 2 Notes from the Prussian Legation, revised translation from the French):

The undersigned Minister Resident of His Majesty the King of Prussia has informed his Government of the objection made by the Honorable Daniel Webster, Secretary of State of the United States, relative to Article 3 of the [1845] treaty for the extradition of fugitive criminals in certain cases between Prussia and the United States, and he has been instructed to submit to him the following observations on this subject:

The above-mentioned Article 3 stipulates "that none of the contracting parties shall be obliged, by virtue of this convention, to deliver up its own citizens or subjects".

This article was adopted in the course of the negotiations between the two Governments, as the Honorable Mr. Webster may see from the official correspondence submitted to the Senate of the United States in the first session of the Twenty-ninth Congress, in consideration of the impossibility in which Prussia found itself, as well as the other German states which are parties to the treaty in question, of delivering up their own subjects to a foreign jurisdiction, as being contrary to one of the fundamental principles of German legislation, and that principle has recently been adopted also in the Prussian Constitution [1] of January 31, 1850, by Article VII, which prescribes: "That no Prussian may be deprived of his legal judge. Niemand darf seinem gesetzlichen Richter entzogen werden."

Now, as the laws of the United States are not opposed to the surrender of its citizens to a foreign jurisdiction, and as under those same laws crimes committed in foreign countries cannot be punished in the United States, the Government of the United States will, in Article 3, have the means of having its citizens punished who have committed crimes in Prussia or in the other German states parties to the treaty, by delivering them to those Governments. On the other hand, if Prussian subjects or other German subjects who have committed a crime in the United States and have taken refuge in Prussia or in their respective countries cannot be delivered up to the jurisdiction of the United States, they will not thereby escape just punishment, since our laws punish crimes committed by our citizens in foreign countries the same as if they had been committed in Prussia, and there would be required for that only the requisition of the Government of the United States in accordance with Article 1 of the unratified treaty in question signed at Berlin January 29, 1845.

The principal purpose of this treaty is that the respective criminals mentioned be punished, and from this point of view Article 3 has established a true reciprocity without Prussia and the other contracting states being bound to deliver their own subjects who have committed in the United States one of the crimes designated in the treaty. Moreover, the case will seldom arise in which the latter would return to their country of birth without having lost their citizenship there, as the undersigned had the honor to explain to the Honorable Secretary of State of the United States in his note [2] of May 20, 1847.

All these circumstances having been submitted to the Senate of the United States for its consideration by His Excellency President Polk, that august assembly unanimously declared its approval for the ratification of the treaty in question at its session of June 21, 1848.

Nevertheless, ratification was refused by the said President without His Majesty's Government having been able to learn as yet the reasons for a course of action so contrary to the customs of the Government of the United States observed in similar cases as well as to the customs of international law, in view of the fact that in the course of the negotiations between the two Governments on the treaty in question, Article 3 was adopted only after the American Plenipotentiary at Berlin had asked and received positive instructions on this subject from His Excellency the President of the United States. The undersigned has the honor to send herewith the copies of two notes relating to this question,

[1] English translation in 39 British and Foreign State Papers, 1025–39.
[2] Printed above.

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one [1] from Mr. Wheaton to Baron Bülow, Minister of Foreign Affairs of His Majesty the King of Prussia, dated at Berlin February 19, 1844, and the other [2] from the Honorable J. C. Calhoun to Mr. H. Wheaton under date of August 23, 1844.

By virtue of the approval of the said Article 3 on the part of the President of the United States expressed in this last note from Mr. Calhoun, then Secretary of State of the United States, to the Plenipotentiary of the Government of the United States at Berlin, the above-mentioned treaty was concluded between the Plenipotentiaries of the respective Governments.

The undersigned requests the Honorable Daniel Webster to be good enough to submit this matter to His Excellency the President of the United States for his consideration and avails himself of this opportunity to renew to him the assurances of his most distinguished consideration.

Webster answered rather vaguely to the effect that he had again submitted the matter to the President, who remained "inclined . . . to entertain any renewed propositions" whenever Von Gerolt could say that he had received "full authority to enter upon the negotiation" (D.S., 6 Notes to German States, 292–93, June 19, 1851).

The only point open was whether the United States would assent to a clause excluding the obligation of a contracting party to deliver up its own citizens or subjects; such a clause (Article 3) was to the Prussian Government a *sine qua non;* to the Government of the United States the question was one of policy on which American officials of high place had expressed contrary views (for the history and law of exemption of citizens from surrender, see Moore, Extradition, I, 152–93); Von Gerolt very naturally responded to the indefinite answer of Webster with this specific inquiry as to the attitude of President Fillmore (D.S., 2 Notes from the Prussian Legation, June 23, 1851, translation):

The undersigned Minister Resident of His Majesty the King of Prussia has the honor to remark, in answer to the note which the Honorable Daniel Webster addressed him on the 19th of this month, that His Majesty's Government, after instructing him to call the attention of the present Secretary of State of the United States to the condition in which the matter relative to the treaty of extradition of fugitive criminals between the Governments of Prussia and the United States had been left by the former administration and to reply to the objections which the Honorable Secretary of State had expressed verbally to the undersigned in regard to the third article of said treaty, also apprised him that, if necessary, a special power would be sent to him to enable him to sign a new treaty of extradition with the Honorable Secretary of State of the United States as soon as the difficulties in reference to the third article in question had been removed, without which the aforesaid power would be useless.

It was in furtherance of this object that the undersigned addressed his note of the 10th instant to the Honorable D. Webster, after the Honorable Secretary of State, in the conference of June 7th, had verbally expressed a desire that the undersigned would put down in writing the remarks he intended to make in behalf of his Government in reference to the third article aforementioned, promising to return a written reply.

The undersigned, in submitting the explanations contained in his note aforesaid to the consideration of the Honorable Secretary of State, begs that he will be pleased to inform him what are the intentions of His Excellency the President in regard to the third article of the treaty in question, in order that he may communicate the same to the King's Government, which will not fail to forward to

[1] Cited above.
[2] Cited and quoted in part above.

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the undersigned the special power mentioned in the note of the Honorable Secretary of State of the 19th instant in the event of said treaty being concluded between the two Governments.

The nature of the reply to be made to the foregoing note was referred to President Fillmore; there are four relevant papers to be considered which are now (very inappropriately) bound in D.S., 2 Notes from the Prussian Legation, following a note of December 9, 1851. The first of these to be mentioned, the second in present order of arrangement, is this undated and unsigned writing, which appears to be a communication to the President from the Secretary of State in third-person form:

The Secty of State refers to the Prest two notes [1] from Baron Von Gerolt, wh. he has recently recd To the former the Secretary replied [2] by saying that as soon as the Minister recd full power to treat, the Prest wd. favorably receive any new propositions for the conclusion of a treaty of Extradition.

Baron Gerolt in reply asks for a specific answer as to whether the Prest will sanction any new Convention of Extradition wh. may contain a stipulation that none of the Cont. Parties shall be obliged by it to deliver up their citizens or subjects.

Second to be mentioned of the four papers, first in present order of binding, is a fair draft for signature by Webster of a note addressed to Von Gerolt, dated July 8, 1851; this, if sent, would have ended the negotiation, for it includes the statement that "the retention of that article [3] in the proposed new Convention would not, under any circumstances, receive the sanction of the President"; but no such note was sent; it may be conjectured that this draft was submitted to Fillmore as a possible reply to Von Gerolt and was disapproved. Third of the four papers is this signed original letter of Webster to Fillmore (the record copy whereof is in D.S., 6 Report Book, 360–61), enclosing the two notes of Von Gerolt of June 10 and 23, 1851:

DEPARTMENT OF STATE,
Washington, 9th July, 1851.

To the PRESIDENT.

MY DEAR SIR, On the 29th January, 1845, a Convention of Extradition between the United States and Prussia and other German States, was signed at Berlin, of which I send you a printed copy, containing President Polk's Message calling the Senate's attention to the 3rd Article. The Senate, notwithstanding, assented to the Convention as signed and submitted, as far as appears, without opposition. But the President afterwards refused to ratify it under the strong advice of Mr Buchanan, on account of the 3rd Article. Of course the Convention never returned to Germany for ratification.

You will see by the two notes enclosed, upon what ground Baron von Gerolt places the necessity of the 3rd Article, and he now wishes to know whether the President would agree to a Convention embracing such an Article

He has as yet no power to negotiate a Treaty, and what he wishes to know, he wishes to know in advance. I think it may be as well that I should say to him that when he obtains his full powers we will take up the subject and see if the parties can come to any agreement.

Yours truly,

DAN[l] WEBSTER

[1] Those of June 10 and 23, 1851, each printed above.
[2] Note of June 19, 1851, cited above.

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Fourth and last of those papers is this undated, initialed, holograph memorandum of Fillmore with its postscriptal suggestion of amendment of Article 3:

Memo of Treaty with Prussia.

I do not understand Baron Gerolt's reasoning. I suppose the stipulations to surrender fugitives from justice to be mutual; and the exception in the 3d article is clearly so. Yet he reasons as though the treaty required [1] us to surrender our own citizens but did not require them to surrender their subjects; and insists that the benefits are reciprocal because by the German law, a crime committed here by a German subject, may be punished in his own country, but not so where a crime is committed by a citizen of the U.S. in Germany.

But even if his assumption of the terms of the treaty and its effect were correct, I should not approve of it. It is a delicate matter to surrender our own citizens to be tried by a foreign jurisdiction, perhaps without jury and by torture, with no reciprocal right to claim a like privilege as to those who infringe our laws.

The delicate point is in the *surrender*, and this is manifest from the fact that they have a fundamental law prohibiting it.

It is also clear that a pretended trial in Germany for a crime committed here must be a mockery. Even if national prejudice did not render it so, the utter impossibility of obtaining the requisite proof would.

M. F.

P.S. I wrote the above before seeing the treaty or the printed correspondence accompanying the President's message to the senate. The objections taken in the message may be easily obviated by declaring that "none of the contracting parties shall be bound to deliver up its own citizen or subjects under the stipulation of this convention, and every person shall be deemed a citizen or subject of the country where he was born or in which he has been duly naturalized, if not born in the country required to surrender him. But no act of naturalization shall deprive him of his citizenship by birth, when born in any country forming a party to this treaty."

Accordingly, the reply to the note of Von Gerolt of June 23 was sent by Webster in these terms on July 12, 1851 (D.S., 6 Notes to German States, 294):

The Undersigned, Secretary of State, has the honor to inform the Minister Resident of Prussia, that he has submitted his last communication to the President, and is, now, instructed to say that, when Baron von Gerolt shall have obtained full power for the purpose, the Undersigned will enter with him into a negotiation of a Convention of Extradition, upon such principles, as it is hoped may be agreeable to both parties. The Undersigned, however, to prevent misapprehension, desires it to be clearly understood by Baron von Gerolt, that the provisions of the Treaty, whatever their character may be, must be entirely & exactly reciprocal.

Webster's requirement of a formal full power from the King of Prussia as a condition precedent to the negotiation was not pressed. After a lapse of some months, during which Von Gerolt doubtless consulted the Prussian Foreign Office, he wrote on December 5, 1851,

[1] This misapprehends what Von Gerolt wrote in the fourth paragraph of his note of June 10, 1851 (printed above). He did not intimate that the treaty *required* the United States to surrender American citizens. What he did intimate and say was that the United States would, under Article 3, have *power* to do so. Curiously enough, the question of *power* under such a clause, which is to be found in various treaties of the United States, was not authoritatively decided until 1936, after having been the subject of conflicting views (*Valentine* v. *United States ex rel. Neidecker*, 299 U.S. 5–18, decided November 9, 1936; see Moore, Extradition, I, 163–69).

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that before submitting "in writing the proposed modifications of the extradition treaty between the United States and Prussia, it would be very desirable for me to have another verbal explanation with you" (D.S., 2 Notes from the Prussian Legation). There were discussions of amendment to Article 3 following the suggestion of Fillmore. The concluding paragraphs of the "Synopsis" (cited above), which was probably presented by Von Gerolt at this time, read thus:

When this subject was presented again to the Secretary of State under the present Administration by the Prussian Minister under instructions from his Government, Mr Webster expressed his readiness to reassume the negotiations with Mr von Gerolt, when he would have received the formal power from his Government.

This power has been granted to Mr von Gerolt by a despatch of his Government dated Berlin 16 April 1851 provided that the new treaty would be concluded in conformity with that of 1845 on the same subject with a few modifications respecting the names of the german States, who are parties to the treaty.

The objection made in President's Polk message with regard to the 3d art could satisfactorily be removed by stating in that article that *german naturalized* citizens in the U.S. shall not be considered as german subjects.

And as an accompaniment to the draft convention which was with Von Gerolt's note of December 9, 1851 (quoted below), was this alternative draft of Article 3:

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention; it is, however understood, that all subjects from the above mentioned German States, who by their emigration to foreign countries have, in accordance with the laws of their native country, been released from their allegiance, and who may or may not have become citizens of the United States, will be delivered up to the United States authorities in the cases provided in Art: I of this convention, and it is also understood that such persons emigrated to the United States, who have not yet become American citizens, will be delivered up to the Prussian Authorities in the cases fixed in Art: I of this Convention.

Von Gerolt, however, preferred that Article 3 should stand unchanged from the text of 1845 and that in lieu of amendment thereto there should be an explanatory recital in the preamble. In transmitting his proposed draft convention he wrote on December 9 as follows (*ibid.*):

With reference to our verbal communications in regard to a Convention between Prussia and the United States for the mutual delivery of criminals fugitive from justice, I beg to enclose a Copy of the proposed articles for that Convention in which the necessity of introducing the stipulation of art: III is explained in the Preamble.

A full reciprocity being established by that article by which "none of the contracting parties shall be bound to deliver up its own citizens or subjects", it would seem unnecessary to introduce in the said Convention any further explanation in regard to the practical effect of article III because the qualification of citizenship will be determined by the laws of the respective countries and it has been shown already to the full satisfaction of the United States Government, that all subjects from Prussia and other German States, who by their emigration to foreign countries have, in accordance with the laws of their native country been released from their allegiance and who may or may not have become citizens of the United States, will be delivered up to the United States Authorities in the cases provided in article I of the convention.

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The draft of the English version of the convention which was with the foregoing note of Von Gerolt of December 9, 1851, is almost identical[1] with the final wording (D.S., 2 Notes from the Prussian Legation, preceding a note of December 16, 1851); with a few slight changes, which are not of sufficient importance to be enumerated and which are indicated in pencil on the manuscript, the draft was approved by the President. Von Gerolt was duly informed by a note of Webster of January 16, 1852, in which the latter wrote (D.S., 6 Notes to German States, 302):

> I have the honor to acknowledge the receipt of your note, of the 9th ultº, with the accompanying draft of an extradition Convention between the United States, Prussia and certain States of the Germanic Confederation. In reply, I have the honor to inform you, that your communication has been submitted to the President, who approves the draft as herewith transmitted and will empower me to sign the instrument on the part of the United States whenever you shall inform this Department, that you are authorized to sign the same on the part of Prussia and the other German States.
>
> You will notice that the accompanying draft is substantially the same as the one communicated by you.

Thus no change was made in Article 3. In all essentials the convention of 1845 was accepted as the convention of 1852 with merely the addition of this explanatory recital in the preamble:

> and whereas the laws and Constitution of Prussia and of the other German States, parties to this Convention, forbid them to surrender their own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the Convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States

The convention was submitted to the Senate with the formal presidential message of June 22, 1852, and without any accompanying papers; it was reported from committee "without amendment" on August 13 and was laid on the table on August 30, the next to the last day of the first session of the Thirty-second Congress (Executive Journal, VIII, 403, 438, 450).

The time allowed by Article 6 of the convention for the exchange of ratifications was six months from signature, or until December 16, 1852; as the Senate had not acted, an extension of the period was necessary; Congress was to reassemble on December 6. The point was called to the attention of Secretary of State Everett by Von Gerolt in a note of November 10, 1852, transmitting a project of an additional article written in English and German (D.S., 2 Notes from the Prussian Legation); this Everett accepted two days later (D.S., 6 Notes to German States, 329); and the article of extension for a year from its date was signed on November 16 and sent to the Senate with the presidential message of December 8 (Executive Journal, IX, 7).

Again there was a report from committee "without amendment" of the convention and additional article (*ibid.*, 31–32, February 17, 1853). The session ended on March 3 without action taken. During

[1] The list of German states in the preamble of the draft differs from that in the signed convention in the inclusion of Bavaria and Baden and the omission of Hesse-Homburg.

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the special session of the Senate which followed the incoming of the Pierce administration (March 4 to April 11, 1853), the convention was considered and the simple resolution of advice and consent adopted on March 15 by 25 yeas to 12 nays, just the necessary two-thirds majority. A change of one vote would have caused the convention to be rejected. A separate resolution of advice and consent to the additional article was agreed to unanimously (*ibid.*, 58, 68–69).

The action of the Senate was acceptable to President Pierce and Secretary of State Marcy (see D.S., 6 Notes to German States, 341–42, Marcy to Von Gerolt, March 17, 1853). Ratification by the United States (May 27), exchange of ratifications (May 30), and proclamation (June 1, 1853) followed.

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URUGUAY : JUNE 23 AND 24, 1852

Settlement of the Claim of Zimmermann, Frazier & Company. Note of Florentino Castellanos, Minister of Foreign Affairs of the Oriental Republic of Uruguay, to Robert M. Hamilton, Consul of the United States, dated at Montevideo June 23, 1852, in Spanish. Answering note of the Consul, dated at Montevideo June 24, 1852, in English. Not subject to ratification. Not proclaimed.

[*The Minister of Foreign Affairs of Uruguay to the Consul of the United States*]

[Translation]

MINISTERIO DE
RELACIONES EXTERIORES
Monte Video June 23 de 1852

El infrascripto Ministro de Relaciones Exteriores, tiene el honor de manifestar al Senor Consul de los Estados Unidos, que por resultado de la conferencia que tuvo hoy, con S. S^{a}, sobre el arreglo de la reclamacion de los Srs Zimmermann Frazier & Ca, el Gobierno ha acordado dar les mensualmente la cantidad de Cuatro Mil Pesos [1] corriente, al fin de cada mes, empezando en el proximo de Julio, hasta integrar la totalidad de los Veinte, y un Mil, Setecientos y Ochenta, que importa la liquidacion que adjuntó S. S^{a} a Su Nota[2] fha 21 del corriente, a cuyo fin se pasa la debida comunicacion al Ministerio de Hacienda.

MINISTRY OF
FOREIGN RELATIONS
Montevideo, June 23, 1852

The undersigned Minister of Foreign Relations has the honor to communicate to the Consul of the United States that, as a result of the conference which he had today with His Excellency on the settlement of the claim of Messrs. Zimmermann, Frazier & Company, the Government has decided to give them monthly the sum of four thousand pesos,[1] currency, at the end of each month, beginning the coming month of July, until completion of the total of twenty-one thousand seven hundred and eighty, the amount of the statement which His Excellency enclosed with his note[2] dated the 21st in-

[1] In the left-hand margin of the source paper, opposite "Cuatro Mil Pesos", is written "$4000.0.0".
[2] Printed in the editorial notes.

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Con este Motivo, el Infrascripto se complace en reiterar al Senor Consul, las seguridades de su mas distinguida consideracion, y Aprecio.

firmado, FLO^{o} CASTELLANOS.

stant, for which purpose the proper communication is being sent to the Ministry of the Treasury.

On this occasion the undersigned takes pleasure in renewing to the Consul the assurances of his most distinguished consideration and esteem.

FLO^{o} CASTELLANOS.

[*The Consul of the United States to the Minister of Foreign Affairs of Uruguay*]

CONSULATE OF THE UNITED STATES OF AMERICA.

Monte Video, June 24th 1852

The Undersigned Consul of the United States, has had the honor to receive the Note of the 23rd Instant from H Ex^{y}, the Minister of State, and for Foreign Affairs of the Republic, in which Note H Ex^{y}, is pleased to say, "That the Government agrees to pay unto Mess. "Zimmermann, Frazier & Co, the Sum of *Four thousand Dollars* "currency monthly, beginning in the forthcoming month of July "next, until full payment is made of *Twenty one thousand Seven "hundred*, and *Eighty Dollars*,[1] to which sum the statement amounts, "as enclosed by the Consul in his Note, dated 21 Instant".

In reply to the foregoing proposal for the settlement of the reclamation, the Undersigned after consulting with Mess Zimmermann, Frazier & Co, the Consignees of the Gun Powder, for which the Claim has been made, is most happy to inform H E^{y}, that said *proposal* being *satisfactory*, is *duly accepted*, under the fullest assurance (based upon the verbal guarantee of H E^{y}, during the conference of yesterday) that the agreement will be religiously complied with on the part of the Government, and that it will furnish the aforementioned Gentlemen with the requisite orders upon the Treasury, in conformity with the foregoing stipulation.

The Undersigned will avail himself of the earliest opportunity to transmit to his Government, copies of the Correspondence in which he has had the honor of participating with H E^{y}, on the foregoing

[1] In the left-hand margin of the source paper, opposite "Four thousand Dollars" and "Twenty one thousand Seven hundred, and Eighty Dollars", are written respectively "$4000." and "$21780."

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subject, and he doubts not of its perfect approbation of the arrangement made, for the final settlement of the long standing claim of its Citizens.

The Undersigned begs leave to salute H E^{y}, the Minister of State, and of Foreign Affairs, with Sentiments of the highest consideration, and unlimited respect

R. M. HAMILTON,
Consul of the United States, of America.

H. Ex^{y} Dr Flo^{o} CASTELLANOS,
Minister of State, and for Foreign Affairs, of the Oriental Republic, of the Uruguay.

NOTES

Copies of the notes exchanged between the Minister of Foreign Affairs of Uruguay, Florentino Castellanos, and the Consul of the United States at Montevideo, Robert M. Hamilton, dated respectively June 23 and 24, 1852, and printed above, are with Hamilton's despatch of June 25, 1852 (D.S., 7 Consular Despatches, Montevideo, No. 191, enclosures 6 and 7).

The principal sum involved in the settlement was $11,000, to which was added interest at 1 percent a month from May 2, 1844, to July 2, 1852, making in all $21,780.

THE CLAIM

The claim was at no time disputed, and the facts from which it arose were not in question.

There are various relevant papers (not hereinafter specifically cited) in D.S., Montevideo Claims, miscellaneous, folder *Junius*.

On August 18, 1841, the firm of William Musser & Company, of 263 Market Street, Philadelphia, shipped from that port by the brig *Junius*, William R. Brown, master, 600 kegs (15,000 pounds) of gunpowder, consigned for sale to Zimmermann, Frazier & Company, of Montevideo. The gunpowder was valued by the consignors at $10 a keg, or $6,000. After deposit in the port of Montevideo, the powder was taken over (seemingly in 1843) by the Government of Uruguay for its own needs and use.

A later shipment to Montevideo of 500 kegs of gunpowder was made by Sampson & Tappan, of Boston, by the brig *Cadet*, consigned to Edward Davison, their agent; this was similarly taken over in 1844 by the Uruguayan Government (D.S., 7 Consular Despatches, Montevideo, Sampson & Tappan to the Secretary of State, December 29, 1851, enclosing a letter of Davison to the former, from New York, December 26, 1851).

By a letter of William Musser & Company of December 28, 1843, the attention of the Department of State was called to the case, so far as it concerned the powder shipped by that firm.

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As there was at the time no diplomatic agent of the United States in Montevideo,[1] the matter was referred by Secretary of State Upshur to the Navy Department, although it seems that appropriate instructions might have been then sent to the American Consul at Montevideo, Robert M. Hamilton.[2]

Pursuant to orders from the Secretary of the Navy (David Henshaw) of January 24, 1844, Commodore Daniel Turner, U.S.N., who was then commanding the United States Squadron on the Brazil Station, on his next visit to Montevideo had several interviews with the Minister of Foreign Affairs of Uruguay; at these it seems that Hamilton was also present. The result thereof was the obtaining of two written obligations of the Treasury of Uruguay in favor of Zimmermann, Frazier & Company. These were dated December 16, 1844, one (for the powder of Musser) reading thus in translation, and the other (for the powder of Sampson & Tappan) being of similar form in the sum of $5,375 (D.S., 6 Consular Despatches, Montevideo, No. 151, June 20, 1848, enclosures A and B; see also despatch No. 158 of Commodore Turner to the Secretary of the Navy, dated from the U.S. ship *Raritan*, harbor of Rio de Janeiro, January 3, 1845):

The Office of the Auditor General of the Oriental Republic of Uruguay

Certifies that Messrs. Zimmermann, Frazier & Company are creditors of the funds of the Public Treasury for the amount of six thousand pesos proceeding from the value of six hundred kegs of powder brought in by the American brigantine *Junius* and placed in the powder magazine, as storehouse of the customhouse, from which the Government withdrew them for its use, and also the sum of four hundred and fifty pesos for 1 percent interest due from May 2 of the cur-

[1] The first diplomatic representative of the United States accredited as such (and not on special mission) to the Oriental Republic of Uruguay was Alexander Asboth, of Missouri, appointed Minister Resident on April 5, 1867, and previously, on March 12, 1866, appointed Minister Resident to Argentina. Mr. Asboth died at Buenos Aires on January 21, 1868; because of illness he had not presented his credentials in person at Montevideo but had forwarded them to the Minister of Foreign Affairs, Don Alberto Flangini; and he was recognized as Minister Resident by decree of October 2, 1867 (D.S., 3 Despatches, Paraguay and Uruguay, No. 1, October 15, 1867, and included papers).

Regarding the special mission to Uruguay in 1852 of Robert C. Schenck, Minister to Brazil, and John S. Pendleton, Chargé d'Affaires to the Argentine Confederation, and the unperfected treaty signed at Montevideo on August 28, 1852, see the editorial notes to Document 160.

[2] Hamilton had been commissioned Consul at Montevideo on February 12, 1838, and assumed charge on June 20, 1838; he resigned in 1857, and his service may perhaps be deemed to have ended on February 17, 1858, when he closed the Consulate, or, more strictly, on the following February 20, the date of his inventory.

It appears from his own statement (D.S., 7 Consular Despatches, Montevideo, July 1, 1851, private), that Hamilton was a son of Dr. Thomas Hamilton, of Baltimore, and previously of Alexandria, Virginia, family physician to George Washington in 1797–98 and part of 1799, and a "Surgeon of the Flotilla" in the War of 1812. Hamilton himself had served as an officer in the War of 1812 and had been taken prisoner with Commodore Joshua Barney at Bladensburg. Hamilton memorialized Congress for compensation for his diplomatic services at Montevideo; but it seems that his petitions were disallowed (Senate Report No. 336, 33d Congress, 1st session, serial 707; Senate Report No. 525, 33d Congress, 2d session, serial 775; House Report No. 292, 34th Congress, 1st session, serial 870).

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rent year, on which date the said six thousand pesos was ordered to be paid to them, to this date; and for which sum total of six thousand four hundred and fifty pesos, by superior decree of this date, it is ordered they be given the present certificate, which shall be paid to them in cash in silver whenever the Government is able to provide itself with the means to take care of said payments, when the siege of this place is lifted, 1 percent monthly interest being allowed from this date on the said six thousand four hundred and fifty pesos, and which interest shall be paid in cash in silver on the expiration of each month. And in pursuance of the said decree which so orders, I sign the present at Montevideo December 16, 1844.

MANUl FIGUERÓA
Auditor General

Based on that arrangement of 1844, instructions under date of December 1, 1847, were sent by Secretary of State Buchanan to Hamilton, who was directed to demand that the arrears of interest be paid at once and that payments to become due be punctually made (D.S., 13 Instructions to Consuls, 45–46). At this time it seems that the Department of State was informed only of the shipment by the firm of Musser and was not aware of the part of the claim arising from the other shipment.

Hamilton accordingly negotiated with the Minister of Foreign Affairs, Manuel Herrera y Obes, regarding the interest arrears, which then amounted to more than $4,000, or, if *compounded* at the rate of 1 percent monthly up to January 31, 1848, as calculated by Zimmermann, Frazier & Company, to $5,348.6½ (D.S., 6 Consular Despatches, Montevideo, No. 151, June 20, 1848, and enclosure C). The Government of Uruguay was continually willing to meet the obligations but remained wholly unable to do so because of its international and domestic position at the time. Hamilton reported that the revenues had "recently been almost entirely cut off by the political arrangements of Governor Rosas of the Argentine Republic" (*ibid.*). The situation of the Uruguayan Government during this entire period was indeed one of great difficulty both politically and financially. The siege of Montevideo, mention of which was made in the arrangement of 1844, lasted from 1843 to 1851 (Pan American Union, American Nation Series, No. 20, Uruguay, 7).

The correspondence of 1848 at Montevideo was begun by a note of Hamilton of February 28; after some further exchanges, proposals of the Uruguayan Minister of Foreign Affairs made by note of May 31, 1848, were, with the concurrence of Zimmermann, Frazier & Company, accepted by Hamilton by a note of June 3, conditionally and "subject to the consideration of the Government of the United States"; the terms were, as reported by Hamilton, "To pay at the expiration of Six Months from the 31st May present Year, One third the Amount of Interest due to the day of payment, One third, one Month thereafter, and the other third at the end of the Second Month, and then the Monthly Interest as it becomes due to be punctually paid in conformity with the anterior Stipulations of the Government"; and, as Hamilton specifically mentioned in his despatch, this new arrangement covered the amounts due in respect of both shipments of gunpowder (D.S., 6 Consular Despatches, Montevideo, No. 151, June 20, 1848, and enclosures).

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The arrangement so made having been communicated to and approved by the firm of Musser, met with no objection from Secretary of State Buchanan (D.S., 13 Instructions to Consuls, 116–17, September 25, 1848); but circumstances continued to make fulfilment on the part of the Government of Uruguay almost if not wholly impossible; there was further correspondence at Montevideo when the first due date of payment arrived; and Hamilton then wrote of the financial inability of the Uruguayan Treasury as follows (D.S., 6 Consular Despatches, Montevideo, No. 159, December 20, 1848):

> That the Government of Montevideo, is seriously embarrassed in pecuniary resources, there cannot be a doubt, and indeed, if the French Government did not support the Garrison with an advance of Forty thousand Dollars pr Month,[1] which *sum* is *disbursed* by its *Agent*, the City, and Government, would be obliged to succomb at once to the Besieging Army, under the command of General Oribe, the Revenue formerly collected, being entirely annihilated, by the policy of General Rosas.

There were more letters from the Musser firm to the Secretary of State in 1849; and more notes were written at Montevideo in 1850, among which were two "conjoint communications" to the Uruguayan Minister of Foreign Affairs from the "Commander in Chief of the Naval Forces of the United States, on the Coast of Brazil, and River Plate [Commodore George W. Storer, U.S.N.], and the Consul of the United States" (D.S., 6 Consular Despatches, Montevideo, No. 167, April 25, 1850, and enclosures G, H, I, and J). Secretary of State Clayton had written to the Secretary of the Navy, William Ballard Preston, communicating a letter of Musser & Company of December 3, 1849, and recommending "to your favorable consideration the request which it contains that the United States' Naval Commander on the Brazil Station be directed to coöperate with the Consul at Montevideo in obtaining from the Montevidean Government payment of the interest on the claim of those gentlemen against the Montevidean Government" (D.S., 37 Domestic Letters, 374, December 7, 1849).

The case was brought to the notice of Secretary of State Webster by a letter of Sampson & Tappan of December 29, 1851, with a letter of Davison from New York of December 26 (cited above), giving the facts regarding the shipment of powder by the Boston firm; copies of the papers were forwarded to Hamilton with an instruction which included this paragraph (D.S., 16 Instructions to Consuls, 32–33, January 2, 1852):

> This claim appears to be, in all respects similar to that of Messrs. Musser & Co. of Philadelphia, in regard to which instructions were given to you in Decr 1847; if this be so (of which you will be enabled to judge correctly, from the papers which are said to be in your possession) you are now requested to be guided by them, and to bring this matter at an early moment, to the notice of the Government, and to urge its speedy settlement. It is hoped, as the debt has been often acknowledged, and the Government is now in receipt of duties by the removal of the

[1] See the convention of subsidies between France and Uruguay, signed at Montevideo June 12, 1848, in De Clercq, Recueil des traités de la France, V, 617–18.

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blockade, that the parties interested will experience but little further delay in having it satisfactorily adjusted.

This instruction was acknowledged by Hamilton on the following March 18 (D.S., 7 Consular Despatches, Montevideo, No. 190); and on June 25, 1852, he thus reported the conclusion of the negotiation (*ibid.*, No. 191):

In conformity with your Instructions under date January 2ⁿᵈ of the present year, in relation to the claims, of Mess Musser & Co, Philadelphia, and Mess Sampson & Tappan Boston, upon this Government, for value of a quantity of Gun-powder, taken by, and for its own use from the public Deposit, I addressed a Note to H, Eʸ, the Minister for Foreign Affairs of the Republic, under date of the 17ᵗʰ April last, calling his attention to the early payment of the Claims in question, which led to a mutual correspondence on the subject, copies of all which, from Nº 1 to Nº 7 both inclusive, I now have the honor of transmitting herewith, and to all which I most respectfully invite your reference. I would beg leave to state, that the first Account presented by me to the Government on this occasion, amounted to $28,244,2.0 Currency, it having been calculated with *compound Interest*, by the Consignees of the Powder, Mess Zimmerman Frazier & Co of this City, which Amount of interest the Government refused to pay, as contrary to Law, but has liquidated the Account allowing the legal interest of Twelve pʳ centum, pʳ Annum on the original Amount, or value of the Powder, which has reduced the debt to $21780 dollars currency, and this change of the account, being acceded to, by the Consignees, the affair has been arranged to the satisfaction of the parties here upon the following terms, viz, The Government have agreed to pay Monthly from the 1ˢᵗ proxº Four thousand Dollars each Month, until the whole Amount of Twenty one thousand Seven hundred and Eighty is cancelled which arrangement is guaranteed by H, Eʸ, the Minister of Foreign Affairs to be fulfilled without fail;

Taking into consideration the pecuniary Embarrasment of the Government consequent upon the enormous and oerwhelming claims upon it, I trust that the arrangement made for the payment of the aforesaid Claim may meet with the approbation of my Government, as likewise that of the parties directly interested; the correspondence herewith, will furnish any further details upon the subject.

Copies of the notes of June 23 and 24, embodying the terms of the definitive settlement, are enclosures 6 and 7 to the despatch just quoted and are printed above following the headnote; enclosure 1 is the opening note of this series, written by Hamilton on April 17, setting forth the claim and mentioning that the Government was now in the receipt of its revenue, as the late war had happily terminated; enclosure 2 is the acknowledgment of Castellanos of May 14; enclosures 3 and 4 are respectively of Hamilton and Castellanos of June 11 and 18; enclosure 5 is the note of Hamilton of June 21 to which, and to the statement of account therewith, reference is made in the note of Castellanos of June 23; the text of that note of Hamilton follows (the account is lacking):

The Undersigned Consul of the United States has received the Note of the 18ᵗʰ Instant, with which he has been honor'd by H Eʸ, the Minister of State and of Foreign Affairs, informing him "that H Exᵃ Government recognizes the justice "of the Claim in question and wishes sincerely to settle it but that the Law of "the Country will not justify the payment of more than the original Amount for "the Powder, taken from the Consignees with the addition of One pº pʳ Month "Interest; & H Eʸ is pleased to say furthermore, that the state of the Public "Treasury makes it impossible to pay the whole Amount of the debt immediately, "but that the payment shall be made by instalments, according to the abilities

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"of the Government, until the whole claim is cancelled, and H E^{y}, honors the "Undersigned with an invitation to a conference with the view of establishing the "mode of payment."

After having consulted the Consignees of the Powder in question and taking into consideration the contents of H Ex^{a} aforementioned Note, the Undersigned has resolved to reduce the Interest charged upon the original Amount to *One* pr *centum* pr *Month* in accordance with the established Law, as represented by H. E^{y} and in consequence, he has now the honor of transmitting herewith a New Account for principal, and interest, calculated from the 2nd May, 1844 to 2nd July 1852, Amounting to *Twenty one thousand, Seven hundred, and Eighty Dollars Currency,* which account he trusts will be found correct, and satisfactory to the Government.

The Undersigned will be most happy to have the honor of an interview with H, E^{y}, on the 23rd Instant at 12 Oclock, to arrange the affair, and he takes pleasure in reiterating to H E^{y}, the assurances of his great respect, & consideration.

Hamilton also wrote on August 26, 1852, to John S. Pendleton, Chargé d'Affaires to the Argentine Confederation, giving the terms of the settlement; and he added that the Minister of Foreign Affairs "verbally guaranteed the Monthly payment aforesaid, and furthermore agreed, that in the event of inability of the Treasury, to pay the Monthly Order when presented, the Consignees Mess Zimmermann, Frazier & Co, were authorized, to deduct said amount from the Duty payable to the Custom House, on despatching Goods" (D.S., 8 Despatches, Argentina, No. 15, September 22, 1852, enclosure).

The approval at Washington of the settlement of 1852 seems not to have been given in express words; but it was implicit in the communication to Musser & Company of the terms of the arrangement when received at the Department of State on August 18, 1852 (Secretary of State Webster to Musser & Company, August 21, 1852; D.S., 16 Instructions to Consuls, 154–55; see also Acting Secretary of State Conrad to the same and to Sampson & Tappan, November 2, 1852; *ibid.*, 195–96; and Secretary of State Everett to Hamilton, February 3, 1853; *ibid.*, 260–61).

Execution of the Settlement

By the terms of the settlement the sum of $4,000 was to be paid at the end of each month, beginning with July 1852, until the total of $21,780 had been liquidated; there were thus to be six payments, five of $4,000 each, from July to November 1852 inclusive, and one of $1,780 in December.

Hamilton reported that the first instalment had been duly met (D.S., 7 Consular Despatches, Montevideo, No. 193, August 10, 1852); his subsequent despatches and letters (the latest of which is dated at Warrenton, Virginia, August 13, 1858) are silent on the subject.

From an account of October 12, 1858, sent by William Musser & Company to Secretary of State Cass with a letter of the same date (D.S., Miscellaneous Letters, October 1858), it appears that that firm received in 1852 and 1853 the sum of $9,543 (July 31, 1852, $2,200; November 11, 1852, $3,155; February 2, 1853, $1,988; April 19,

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1853, $2,200). As the share of Musser & Company in the settlement was nearly 55 percent thereof, the amount that the Government of Uruguay paid in 1852 and 1853 must have exceeded $17,000; but the account, by calculating interest at 12 percent on $6,450 from December 16, 1844, the date of the certificate, with rests at the dates of instalment payments, showed $5,791.50 still owing to Musser & Company.

The account and a copy of the covering letter were sent with an instruction of October 15, 1858, to James B. Bowlin, Commissioner to Paraguay (D.S., 1 Instructions, Paraguay, 38); Bowlin was then about to depart on the mission which resulted in the treaty and convention with Paraguay of February 4, 1859 (12 Statutes at Large, 1087–99); he was at Montevideo for about ten days during the latter part of December 1858 (Manning, Diplomatic Correspondence of the United States, 1831–1860, X, 184, 186, 191); but none of his despatches has any reference to this matter except that of March 9, 1859, written from Montevideo when Bowlin was homeward bound; that despatch included this paragraph (D.S., 1 Despatches, Paraguay, No. 11):

> The little claim here of Mr Gilberts [meaning Musser; the Gilbert claim was against Paraguay], that you directed my attention to shall be strictly attended to, before I leave. I have just arrived here and have had no time yet, to see the Authorities.

After Bowlin's return to the United States, he wrote to Musser & Company, who then requested that instructions be sent to the Consul at Montevideo (D.S., Miscellaneous Letters, June 1859, Musser & Company to Assistant Secretary of State John Appleton, June 27, 1859); an instruction was sent to Richard H. Gayle, Consul at Montevideo, on August 13, 1859 (D.S., 27 Instructions to Consuls, 376–77). Gayle makes no mention of the claim in his despatches.

In 1870 the Department of State directed inquiry to be made in the case; it was said in the instruction of Secretary of State Fish to John L. Stevens, Minister Resident, that so far as could "here be ascertained one payment only", of $4,000, had been made by the Uruguayan Government (D.S., 1 Instructions, Uruguay, 16–18, June 3, 1870); Stevens reported that the claim had been finally liquidated in 1860; he enclosed copies of letters of the Zimmermann firm to William Musser & Company and Sampson & Tappan, respectively of July 28 and August 29, 1860, with an account of the distribution of the proceeds of the final payment (D.S., 3 Despatches, Paraguay and Uruguay, No. 15, March 14, 1871, and enclosures); from the mentioned letter of July 28, 1860, this passage is excerpted:

> We have pleasure in advising you of the final settlement of the powder claim against this government, which after agitating for a protracted period in concert with E Davison Esq., Representative for the parties interested in the "*Cadets*" cargo & the Amⁿ Consul, we agreed to compound the whole claim for the powder taken out of the above mentioned vessel & "*Junis*", for *6000$* M.V.Cy. which we trust you will approve of, convinced we are that had it not been for the desire shewn by the actual administration to settle all claims, the re-iterated applications made by us & the Consul it must have been abandoned.

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Other Claims

During his consulship at Montevideo, Hamilton dealt with two other claims of American citizens against Uruguay, namely, the case of Silas E. Burrows and the case of the brig *Victor*.

THE CASE OF SILAS E. BURROWS

Three weeks after the exchange of notes of June 23 and 24, 1852, for the settlement of the claim of Zimmermann, Frazier & Company, Robert M. Hamilton, Consul of the United States at Montevideo, in a despatch dated July 15, 1852, reported the payment of a claim of Silas E. Burrows, a citizen of the United States, against the Government of Uruguay, as follows (D.S., 7 Consular Despatches, Montevideo, No. 192):

Mr Silas E Burrows a Citizen of the United States, when on the eve of Departure for California, placed in my hands, a Claim he had upon this Government, amounting to $14279, with the request that I would present it for payment, and in consequence, I addressed the Minister of Foreign Affairs making the reclamation as p^r^ Copy herewith N° 1, to which I received the answer N° 2. since which period I have received from the Government the Sum of $11295.6.0. as payment in full, (an overcharge of Interest having been deducted) and which Amount I now hold subject to his Order, he Mr Burrows being absent.

The note of Hamilton to the Minister of Foreign Affairs of Uruguay under date of January 18, 1852, reviewing the history of the claim and requesting payment, and the answering note of the Minister of Foreign Affairs under date of February 10, 1852, copies whereof, with a translation of the latter, are enclosures 1 and 2 with the cited despatch of Hamilton, read thus:

[*Mr. Hamilton to Mr. Herrera y Obes*]

Consulate of the United States, of America.
Monte Video Jany 18th 1852.

The Undersigned Consul of the United States of America, has the honor of transmitting herewith to H. Ex^y^ Don Manuel Herrera y Obes Minister for Foreign Affairs of the Oriental Republic of the Uruguay, an Account against the Government, amounting to *Forty two thousand, eight hundred, & thirty eight Dollars Seven hundred, & forty five reis*, Monte Video Currency, arising from, and under the following circumstances, viz.—In the Month of November 1843, Mr Silas E. Burrows, a Citizen of the United States, & Mr. Francis Hocquard, a British Merchant, resident of this City, purchased from the Government, (conjointly) a parcel of Ground in the "Plaza Independencia" for which they paid a large Sum of Money, and the Government furnished said purchasers with *Title Deeds*, of the said property, and which Title Deeds are now in deposit in this Consulate; but it appears, that after a long and tedious process of Law, the Judicial Authorities of the Country *decided*, that the sale of said *Property*, by the Government, *was illegal* and consequently of no effect, and thus the *Title Deeds, became valueless*, and the purchasers, have been deprived of the said Property, which they paid for, without indemnification

The Undersigned having been called upon, by his Countryman Silas E Burrows. Esq. to make reclamation *for his One third Interest*, of the whole Amount as p^r^ Account herewith, he begs leave to respectfully solicit, H Ex^y's^ attention to the same, amounting to *$14.279.5.15 Fourteen thousand, Two hundred, & Seventy nine dollars, five hundred, & fifteen reis*, including interest to the 13th of the present month, & should H Ex^y^, require any documents to prove the correctness of the

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Account now rendered for payment, he will please inform the Undersigned, who will furnish such, as H Exᶜʸ may consider necessary; Having had the honor of a personal interview with H. Eˣ, some few months back, during which time the subject of the present reclamation was discussed, and acknowledged to be just by H. Exˣ; the Undersigned fuly assured, that H Exˣ, being aware of the facts of the case; will cause the necessary steps to be taken for the payment, and settlement of this just claim, with the least possible delay. The Undersigned Avails of the occasion to renew to H. Eˣ the Minister of Foreign Affairs the assurances of his most distinguished, consideration, & unlimited respect.

R. M. HAMILTON,
Consul of the United States.

His Exˣ Don MANUEL HERRERA Y OBES,
Minister for Foreign Affairs of the Oriental Republic of Uruguay.

[*Mr. Herrera y Obes to Mr. Hamilton*]

[Translation]

MINISTRY OF FOREIGN RELATIONS,
Montevideo, February 10, 1852.

The undersigned Minister of Foreign Relations has the honor to communicate to the Consul of the United States that his note of the 18th January last, referring to the business of Messrs. Silas E. Burrows and Francis Hocquard, has been passed to the Minister of Finance for his action.

With this motive the undersigned salutes the Consul with his most distinguished consideration and esteem.

MANUEL HERRERA Y OBES

No other papers with regard to this case have been found in the archives of the Department of State.

THE CASE OF THE BRIG "VICTOR"

Robert M. Hamilton, whose service as Consul at Montevideo ended in February 1858, wrote to the Department of State from Warrenton, Virginia, on March 14, 1859, as agent of the New England Mutual Marine Insurance Company, of Boston, claimant in the case of the brig *Victor*. In that communication Hamilton called attention to the case, stating that the claim had been "liquidated by order of the the Government" of Uruguay in January 1854 but had not been paid, and enclosing certain relevant papers. A copy of the letter of Hamilton and its enclosures is in D.S., Miscellaneous Letters, March 1859; the letter reads as follows:

In the Year 1845, at which time I was Consul of the United States, at Montevideo, the American Brig "Victor", Chase Master, was wrecked on the coast about twelve leagues to the Eastward of that port, and was sold at public auction for the benefit of the Underwriters, /The New England Mutual Marine Insurance Comᵖ/Boston/ and the nett proceeds of sale amounting to Fourteen hundred dollars, were left by the Captain in deposit with an Alcalde at the village of Rocha, by the name of Felisberto Pereira, with instructions to hold said amount subject to the order of the United States Consul, Montevideo, after which the Captain departed for the U. States, leaving the Consul to collect, and remit the funds to the interested. A civil war raging at this time and the City of Montevideo being besieged by land & by sea, some few months elapsed ere I had an opportunity of drawing upon Mr. Pereira for the money, and when I did, he informed me by letter, that a short time prior thereto, the said amount of money had been taken from him by Don Juan Ramirez, an Agent of Brigʳ General

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Rivera, Commander-in-chief of the Government forces in the interior, for the use of the Army, giving him Pereira, a receipt for the said amount of $1400, and referring the Consul of the United States at Montevideo to the Govert for payment. On receipt of this intelligence, together with a testified copy of the receipt for the money, I made the case known to the Government, and demanded payment, and after the most vexatious delay, and a lengthened correspondence on the subject, it was not an acknowledged just claim until the month of January 1854, when the account was liquidated by order of the Government, and exhibited the amount due with interest to that date, to be $2709.3.70 Curr, with the promise of payment at an early period, but which promise has never been complied with, and in consequence, as Agent for the Underwriters, I have made out the full account with the legal Interest of 12 pc per annum up to Decr. 31st 1858, amounting to $4660.2.0. Montevideo Currency which may be found annexed to the Documents pertaining to the claims, the which, I have now the honor of transmitting herewith to the Honble Secretary of State, together with a Power of Attorney, & copy of a Letter received from the President of the New England Mutual M. Ins. Comr Boston, giving me full power as their Agent in this affair, and having, now, I trust, explained the case as necessary, I have only to hope that it is entitled to the consideration of the State Department, and that the Honble Secretary of State may please to deem it expedient, to order the transmission of said Documents, to our Minister in that quarter, with the requisite instructions for the recovery, of this acknowledged & long standing debdt.

Hamilton had first informed the Department of the wreck of the *Victor* in a despatch of January 31, 1845 (D.S., 4 Consular Despatches, Montevideo, No. 96), wherein he wrote "that the Brig 'Victor' of Boston, Bailey Chase late Master, from that Port, bound to Buenos Ayres, was wrecked on the 16th Inst in the vicinity of Cape St Marys, Vessel, and Cargo, a total loss, Crew all saved, and arrived at this Port, and are now under my Consular protection". In a despatch of May 19, 1845, Hamilton further reported regarding the *Victor* as follows (*ibid.*, No. 100):

I avail myself of this occasion, to inform you, that the Brig "Victor" of Boston, Baily Chase Master, on her voyage to this River, was Wrecked on this Coast, in the Month of January last, with a Cargo of sundry Merchandize from Boston, said Vessel belonging to Richard Hall Esquire of said City, the Captain after having made an arrangement with Don Felisberto Pereira, an Alcalde of the Village of Rocha, (in the vicinity of the Wreck) for the protection of such of the property as might be saved, and for the remittance of the Nett proceeds of sale thereof, to this Consulate, he the Captain, and Crew, left the Wreck and all pertaining to her, in the hands of said Alcalde, and came to this City, and entered his Protest in this Consulate, after which, he proceeded to Buenos Ayres, and from thence to the United States, leaving me to collect, the funds arising from the Wrecked Vessel, and Cargo, in virtue of which, I entered into a correspondence with said Alcalde Don Felisberto Pereira, and ultimately with HE Don Santiago Vasques, Minister of Foreign Affairs, requesting the replacement of the Nett proceeds of said Property, Amounting to Fourteen hundred Dollars Montevideo Currency, which had been taken from the said Alcalde, by a Government Officer, by order of General Rivera, the Commander in chief of the Army of the Republic, said Officer Don Juan Ramirez, giving a receipt for the same, and as this Government have refused to refund the money, for the present, I transmit herewith copies of the Correspondence in relation to the business, as also Copy of said Ramirez receipt for the aforementioned Amount of Fourteen hundred Dollars. . . .

It appears that the claim was acknowledged on the part of the Government of Uruguay by a so-called "liquidation" signed by the Accountant General of the Treasury under date of January 2, 1854.

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That paper, which was enclosure 13 with the above-cited letter of Hamilton of March 14, 1859, listed the principal of 1,400 pesos, plus 1,309 pesos 3 reals 70 centavos, interest from March 14, 1845, to December 31, 1852, at 1 percent a month, totaling 2,709 pesos 3 reals 70 centavos.

Enclosure 14 with the same letter of Hamilton was a statement of the sum claimed as of December 31, 1858: 2,709 pesos 3 reals 70 centavos, the amount of the above-mentioned liquidation, plus 1,950 pesos 6 reals 60 centavos, interest from December 31, 1852, to December 31, 1858, at 1 percent a month, totaling 4,660 pesos 2 reals 30 centavos Montevideo currency or "$3883.56 Spanish".

An instruction of Secretary of State Cass to Benjamin C. Yancey, Minister Resident to Argentina, dated June 24, 1859, enclosed a copy of Hamilton's letter of March 14, 1859, and its enclosures, and directed Yancey to endeavor to collect "the amount of the liquidated claim with the additional interest since accrued" (D.S., 15 Instructions, Argentina, 129). Yancey, who received that instruction on September 28 at Montevideo, where he was stopping for two and a half days en route to the United States, immediately brought the matter to the attention of the Government of Uruguay in a note of the same date and in an interview with the Minister of Foreign Affairs. In his despatch of September 30, 1859 (D.S., 13 Despatches, Argentina, unnumbered), Yancey expressed the opinion that "a delay of weeks, or perhaps months, would not have enabled me to obtain the money from the Gov't of Uruguay, in view of the financial embarrassments of the times there and pressing pecuniary obligations of the Gov't".

It appears that the claim was not brought forward again until more than ten years later, when an instruction of Secretary of State Hamilton Fish dated June 3, 1870, to John L. Stevens, Minister Resident to Uruguay, referred to the case of the *Victor* and directed Stevens to "follow up the matter . . . to a definitive conclusion" (D.S., 1 Instructions, Uruguay, 16–18). Subsequently a copy of the instruction to Yancey of June 24, 1859, a copy of Yancey's despatch of September 30, 1859, and enclosures, in reply thereto, and a copy of the letter of Hamilton of March 14, 1859, and its enclosures, were sent to Stevens (*ibid.*, 24–25, 30–31, December 1, 1870, and April 15, 1871). Stevens was also in communication with the New England Mutual Marine Insurance Company, claimant in the case (D.S., Miscellaneous Letters, July 28 and August 24, 1871).

In a despatch of November 10, 1871, Stevens reported that he had "finally obtained the action of the Government for the payment of the Victor claim, on condition that I will present the original papers containing the 'decree of liquidation' made in 1854, of which the papers you sent me are copies" (D.S., 3 Despatches, Paraguay and Uruguay, No. 24). With an instruction of January 22, 1872, in reply to that despatch, Secretary of State Fish forwarded the originals of Hamilton's letter of March 14, 1859, and enclosures, copies thereof being retained in the Department of State (D.S., 1 Instructions, Uruguay, 42–44). Under date of March 5, 1872, Stevens acknowl-

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edged receipt of that instruction "accompanied by the original papers" (D.S., 3 Despatches, Paraguay and Uruguay, No. 30).

In his despatch of June 6, 1872, Stevens reported that the claim had been paid in full and that on February 16, 1872, the sum of $6,400 in gold had been remitted direct to the claimant (*ibid.*, No. 35):

> I am pleased to inform the Department of State that the "claim" of the New England Marine Insurance Company, of Boston, on account of the brig "Victor", which has been pending against the Uruguay Government since 1845, has been paid. The original amount, fourteen hundred dollars ($1400) at 8 reals or 80 cents to the dollar of the former standard of this country, or eleven hundred and twenty dollars ($1120) present standard here, with interest has all been liquidated. For the longer portion of the time I collected 12 per cent interest and the remainder of the time 9 per cent, according to the legal practice of the Government at different periods in respect to rates of interest.
>
> By the mail of Feb. 16th I remitted to the N.E.M. Insurance Company a full statement of the liquidation & six thousand four hundred dollars ($6400) in United States Gold. By last steamer I received a letter from the President of the said Company informing me of the safe arrival of the money and expressing warm satisfaction and thanks for the pressure of the "claim" to a successful issue.

Upon receipt of that despatch, Acting Secretary of State William Hunter wrote thus to Stevens (D.S., 1 Instructions, Uruguay, 52):

> The Department offers you its congratulations upon your success in the prompt and, indeed, unexpected adjustment of the matter. It is usual in such cases to make remittances of sums received from foreign governments through the Department. You would have been instructed to take that course in this instance if it had been supposed that there would have so soon be [been] an occasion therefor.

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PERU : AUGUST 6, 1852

Agreement for the Settlement of the Claim of Samuel Franklin Tracy, signed at Lima August 6, 1852. Original in English and Spanish; the Spanish version is not available.
Not subject to ratification by the United States. As to ratification by Peru, see the editorial notes. Not proclaimed.

The Undersigned having held several Conferences upon the claim of Samuel Franklin Tracy, a citizen of the United States, to be indemnified, for certain losses sustained by him in Peru, in the year 1839, in consequence of the measures taken against him, during the Administration of General, D. Augustin Gamarra, and it appearing, by an account transmitted to the Minister of Foreign Affairs of Peru, by James C. Pickett, Chargé d'Affaires of the United States, with an official note[1] bearing date the 5th of May 1840, that the said Samuel, Franklin Tracy claims as follows viz:

1 Loss of twenty three percent on the sale of certain shares in the Cerro de Pasco—say 23% on $52.448___	[2]$12. 083. —
2. Loss of twenty five percent, on the sale of stock of merchandise in his store, or Almacen, in Lima; say 25% on $16.656.5½, equal to $4164.0½ and traspasa of House and fixtures $312: forming together the sum of_____	$4 476. ½
3. Damages for illegal arrest and detention at Callao_	$10. 000. —
4 Loss of time and on his business during that period_	$18. 000. —
5 Loss on two shares, in the Huancavelica Mining Company, dissolved by Decree of the Peruvian Government, dated at Ayacucho April 20th 1839_____	$60. 000. —
	$104. 559. ½

And, after a minute examination into the merits of the aforesaid claim, the Undersigned have agreed that it shall be finally adjusted and settled in the following manner.

1st The Peruvian Government consents to pay to the said Samuel, Franklin Tracy, his heirs, administrators or assigns, the sum of twenty six thousand, five hundred and sixty dollars, current money of Peru,

[1] This note and the account therewith are printed in the editorial notes.
[2] Twenty-three percent of $52,448 is $12,063.04.

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in two annual instalments of thirteen thousand, two hundred and eighty dollars each; the first of the said instalments to be paid, on the 1st of January 1854, and the second of the said instalments to be paid on the 1st of January 1855.

2d The Peruvian Government also consents to allow and pay, to the said Samuel, Franklin Tracy, his heirs, administrators or assigns, interest upon the said sum of twenty six thousand, five hundred and sixty dollars; at the rate of five percentum per annum, counting from the present date.

3d And it is hereby agreed, between the Undersigned, that the said sum of twenty six thousand, five hundred and sixty dollars shall, when paid, together with the interest thereon, as aforesaid, be received by the said Samuel, Franklin Tracy, his heirs, administrators or assigns, as full satisfaction for the losses comprehended in items Nos 1. 2. 3 and 4 as above mentioned.

And with regard to the fifth item, of sixty thousand dollars, for losses incurred by the said Samuel, Franklin Tracy, by the dissolution of the Huancavelica Mining Company; the Undersigned have not included it in the present Memorandum; but refer the said claimant, to the liquidation of the affairs of the said Company, made, between the Peruvian Government and General Francisco de Paula Otero, Director of the said Company and representing the interests of the same, on the 15th of July 1852.[1]

Done at Lima the 6th August 1852.

(Signed) J Randolph Clay (LS) Joaqn J de Osma (LS)

NOTES

The source of the text of this agreement printed above is a copy, in English only, which is with the despatch of John Randolph Clay, Chargé d'Affaires to Peru, dated August 11, 1852, and endorsed as received on the following September 14 (D.S., 9 Despatches, Peru, No. 106). A similar copy of the agreement, headed "Duplicate", is with a duplicate of the cited despatch in the same volume. The original agreement was signed in "the English and Spanish languages" (11 *ibid.*, No. 250, March 9, 1855, enclosure); but the Spanish version is not available.

The Full Powers

This agreement contains no mention of full powers, and no record of a full power to either of the negotiators has been found. Clay, however, had instructions under date of September 18, 1847, and August 12, 1850, directing him to "press" the claim of Samuel

[1] A translation of the arrangement of July 15, 1852, is printed in the editorial notes.

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Franklin Tracy "with respectful urgency" (D.S., 15 Instructions, Peru, 56–58, 70–71).

The Origin of the Claim

The union of Peru and Bolivia under General Andrés Santa Cruz, President of Bolivia and Protector of the Peru-Bolivian Confederation, which commenced in 1836, came to an end in January 1839; forces opposing Santa Cruz occupied Lima on the following February 18; and General Augustín Gamarra became Provisional President of Peru (D.S., 5 Consular Despatches, Lima, Nos. 46 and 48, January 31 and March 14, 1839; printed, the latter in part, in Manning, Diplomatic Correspondence of the United States, 1831–1860, X, 477–80).

Samuel Franklin Tracy, a native of Middletown, Connecticut, and a citizen of the United States, had for eleven years been a resident of Lima, where he was engaged in mercantile pursuits. He had been, according to his own statement, a friend of Santa Cruz and of many of the latter's chiefs and officers for years prior to the establishment of the Confederation. On March 3, 1839, following the accession of General Gamarra, Tracy received from the Government of Peru an order to leave the country within four days; and on March 9 he received a second order to leave within twenty-four hours. Tracy communicated these orders to Edwin Bartlett, United States Consul at Lima, in charge of the Legation.[1] On March 16 Tracy was arrested, taken from Lima to Callao "with orders to be embarked on board the first vessel that might leave that port for any port out of Peru", and was there held in custody in the Castles of Callao (D.S., Peruvian Claims, folder Samuel F. Tracy, Tracy to Vice President Richard M. Johnson, March 25, 1839; D.S., 5 Consular Despatches, Lima, No. 50, May 6, 1839, and enclosures).

Bartlett's immediate efforts on behalf of Tracy and the somewhat extensive correspondence then carried on with the Peruvian authorities by Bartlett as "acting Chargé des Affaires of the United States of America" are thus described in the despatch last cited:

> In my despatch N° 48 of 14 March of which copy is annexed (N° 1) I mentioned that an order had been given by the Provisional President of Peru for Mr Samuel F. Tracy a Citizen of the United States to leave the Republic; and that I had called upon the President to endeavour to get the order revoked, without entering into any correspondence upon the subject. The order was renewed, when I addressed a note to the acting Minister of Foreign Affairs [Manuel del Rio] (copy enclosed N° 2), remonstrating against it, and insisting upon Mr Tracys right of being tried by the laws of the country; but at the same time I called upon the Minister, and at his request upon the President, again endeavouring to settle the affair amicably and offered to take back my note if Mr T. were permitted to remain. The President assured me that no steps should be taken in the business without previously advising me. My Note was dated 9th March;

[1] James C. Pickett, who had been appointed Chargé d'Affaires to the Peru-Bolivian Confederation on June 9, 1838, was at Quito from December 1838 to June 1839, where he was engaged in negotiating the treaty with Ecuador of June 13, 1839 (Document 90). He arrived at Lima on August 6, 1839 (D.S., 5 Despatches, Peru, August 23, 1839), but was not received by the Government of Peru until January 30, 1840 (*ibid.*, No. 6, February 3, 1840).

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and without receiving any reply to it, I was surprized to learn that on the 16th, during my absence from Lima for a day or two, Mr Tracy had been arrested, and sent to Callao with orders to be embarked on board the first vessel that might leave that port for any port out of Peru. On my return to Lima on the 20th I found *my note returned in a blank envelope*, when I immediately called upon the Minister, and enquired the meaning of this strange proceeding. He pretended to have understood me that my note was to have been returned, if his Government refused to accede to my request. I then explained to him his error and insisted upon its being received and replied to; and on the same evening I received a reply dated 11 March (copy enclosed N° 3). To this I replied on the 21 March (copy enclosed N° 4), recapitulating the circumstances connected with Mr Tracy's arrest, and pointing out the illegality of the proceedings against him. This last note of mine embraces the substance of my defence of Mr Tracy's rights. It has never been replied to, the President and his Minister having left Lima two or three days after it was sent in, and you will see in the subsequent correspondence that the person left here in charge of Foreign Affairs, Genl La Fuente, has never even alluded to it, although I have repeatedly referred him to it. I also under date of 22 March addressed another note to the Minister (Copy N° 5) respecting an order given to place Mr Tracy at the disposal of the Comandante of Marine. This has not been replied to, although the evening before the President left, a message was sent to me by the Minister, that both this and that of the 21st would be attended to immediately.

Having waited five days for an answer I addressed another note on the 27 March (Copy N° 6) to the Minister of Foreign Affairs calling the attention of his Government to Mr Tracy's case, and demanding his trial or release. This was answered by Genl La Fuente on the 28th March (Copy N° 7) in which he claims the right of expelling from Peru without previous trial a Citizen of the United States resident therein. On the 31 March I replied as pr copy No 8 endeavouring to combat his arguments, requesting that the case might be reconsidered, and amicably settled. Having been informed that depositions were being taken to criminate Mr Tracy, and knowing the manner in which such "ex parte" testimony is obtained in this country, I claimed for Mr Tracy the right conceded to Citizens of the United States in the 9th article of our treaty[1] with the Confederation, vizt, that of being present at the taking of the depositions; and protested against the admission of any testimony taken in any other way than that pointed out in that article. To this note I received an answer dated 3 april (Copy N° 9) to the contents as well as to the style of which I beg to call your particular attention. Here is a direct refusal to acknowledge the treaty, on the ground that the Peru-Bolivian Confederation never had an existence; and here the correspondence perhaps should have ended, with a simple protest on my part of the whole proceeding against Mr Tracy, reserving to the United States the right of demanding satisfaction for the want of respect evinced in the manner of referring to the treaty. This is the course I had determined upon, when having occasion to call upon Genl La Fuente about the illegal arrest of another Citizen of the United States (who was promptly ordered to be liberated) the subject of the order for Mr Tracy to leave the country was discussed at large, and he proposed that Mr Tracy should leave for Guayaquil pledging himself to give him a passport to return in a few weeks. I replied that I could not consent to his leaving for an hour; that I was contending for his rights and could not yield them. He then said "How can we arrange it"? "The President has given me orders to send him out of the Country" I proposed that he should place Mr Tracy at liberty on a pledge of strict neutrality, and that his Government should pledge itself to justify to that of the United States the steps already taken against him. He said he had not authority to agree to it, but if I would write him a private note to that effect he had no doubt that he could induce the President to accede to it. This induced me to send him a private letter (Copy No 10) making such a proposal and he told me that I should probably have an answer in 5 or 6 days. In the course of this conversation I expressly reserved the right of replying under any circumstances to his remarks about the treaty in his note of 3 april.

[1] Of November 30, 1836 (Document 82).

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I called upon Gen[l] La Fuente several times for an answer to this proposal, and he informed me that the President had not replied to his private letters, sending him word that he was too unwell to write, and would not employ an amanuensis. On the 20th april I wrote him another note (copy n° 11) in which I have replied to his remarks upon the treaty, and have again repeated in an official form the proposal made in my private Note of the 6 april. To this he answered on the 26 april (Copy n° 12) that he had not powers to decide the questions involved, and had referr'd all the correspondence to the President for his orders.

This ends my correspondence with this Gov[t] upon the subject to this date. M[r] Tracy is still a prisoner in Callao where he has been detained since the 16 March. On the 5th april he was sent alongside a Chile vessel of War the Captain of which refused to receive him on board.

In order that you may have in one despatch all the documents relating directly or indirectly to this business I transmit herewith in addition to those already referred to, copies of the following [list of enclosures Nos. 13 to 28 omitted].

From these documents and the preceding details, you will have a full report of this case, which is important to M[r] Tracy, who has been very extensively engaged in business in this country for many years, and who will probably be ruined if he be sent out of it, leaving large balances due to him, owing considerable sums to others, and having a numerous family to provide for entirely dependent upon him for support. But the questions which it has given rise to are of still greater importance to our Citizens resident here and to the honour of our country; If satisfaction be not demanded as well for the outrage against M[r] Tracy's rights, as for the refusal to acknowledge the treaty, the precedent will be dangerous; and new insults, and repeated violations of our rights will be the Consequence.

In my correspondence with this Government I have endeavoured to confine myself to facts and arguments, restraining any expression of feeling which the remarks in some of the notes received have given rise to.

I have said nothing of the pretended charges against M[r] Tracy; for I look upon that point as foreign to the merits of the case—none have been preferred, nor do I know to this moment of what he is accused. In my conversations with the President and the Minister he has been called "an enemy of the present Government" "An Agent of Santa Cruz" &c, but no specific charge has been made verbally or in writing—Nor do I believe that he has been guilty of any act violating his neutrality, farther than perhaps too free an expression of his political opinions; and however imprudent he may have been in this respect, so venial a crime cannot justify such severe and illegal punishment.

Tracy remained under arrest until December 14, 1839, a period of nearly nine months; during how much of this detention he was actually imprisoned is uncertain; in July he was allowed for a time to be at his own house in Lima on parole; and for some portion (perhaps even most) of his arrest "he was permitted to be at large in the town of Callao" (see D.S., 5 Consular Despatches, Lima, No. 56, July 16, 1839, and 5 Despatches, Peru, No. 12, May 25, 1840, enclosures 1 and 2).

Tracy planned to leave Peru for the United States on March 31, 1840 (*ibid.*, No. 9, March 30, 1840); but on March 30 he was again arrested and held until April 11, under circumstances set forth by James C. Pickett, Chargé d'Affaires at Lima, as follows (*ibid.*, No. 10, April 22, 1840):

On the 30th ultimo, and after I had written my despatch of that date, Mr. Tracy, who was about to embark for the United States, as I informed you, was arrested and imprisoned by the Intendant of Police of Lima, and was not released until the 11th instant. In consequence of this proceeding, he will remain some time longer in Peru.

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Mr. Tracy was not arrested for any political offence, but for an alleged contempt of the Intendant. A person declaring himself to be Mr. Tracy's creditor, had taken measures, as is usual in such cases, to prevent him from leaving the country; and upon being summoned to appear before the Intendant and to surrender his passport, he did not obey with the promptitude required, being at the time engaged in settling an account. On appearing before that officer, not long after being summoned, his language was not considered as sufficiently respectful, and he was immediately arrested, tied with a rope, dragged through the streets, on foot, by the police guard, nearly half a mile, to the prison of the old Inquisition; and on his arrival, forced into one of the dungeons; but was removed in a few hours to a comfortable room.

Situated as Mr. Tracy was, it would have been more prudent, had he obeyed the Intendant's summons, without a moment's delay and surrendered his passport, although it could not be demanded legally, at the time. But his failure to do so, certainly cannot justify the harsh and arbitrary proceeding of that officer.—The civil demand against Mr. Tracy, was arranged seven or eight days before he was released.

I enclose herewith, a correspondence with the Minister of Foreign Affairs, growing out of this transaction; from which you will perceive, that the conduct of the Intendant has been approved and defended by the Government here. . . .

Upon his release Tracy "was arraigned for the same offence, and after five months of unintermitting and expensive litigation", was finally discharged (*ibid.*, No. 22, September 10, 1840). It seems that Tracy left Peru for the United States on September 11, 1840 (*ibid.*).

One of Tracy's property rights in Peru was an interest of one tenth (two shares of the twenty) in a quicksilver mining company of Huancavelica; this company had been formed in 1836 with a subscribed capital of $100,000, of which say $30,000 was paid in. That company was dissolved by decree of General Gamarra of April 20, 1839 (D.S., 5 Consular Despatches, Lima, No. 57, July 16, 1839, enclosure 2); and by decree of May 7, 1839, a new company was formed to work the mines (*ibid.*, enclosure 9). The enterprise had become profitable, and the action taken was regarded by Tracy and also by Bartlett as confiscatory (see the despatch last cited and enclosures 1 and 3 to 8 thereto).

In a letter to Pickett, dated at Lima March 1, 1840, Tracy wrote of the proceedings taken against him and of his claim in consequence thereof as follows (D.S., 5 Despatches, Peru, No. 12, May 25, 1840, enclosure 2):

Enclosed I beg leave to hand you a memorandum of the claim I make against the Peruvian Republic, amounting to $104.559 ½ rial, for property seized and confiscated, loss on the sale of my stock of merchandise in Lima, and the Cerro of Pasco, and compensation for my time during the eight months and 28 days of my arrest and imprisonment in Callao; at the rate of $2000 per month; and lastly, the sum of $10.000 as a compensation for the injury and insult offered to my person.

The first sum of $60.000 for my interest in the Mines of Huancavelica, cannot be considered as more than their true value. . . . A calculation made many months since and immediately after the seizure of the establishment and mine, gave a valuation considerably higher; however, I think that which I now refer to, was drawn up with more care.

The second sum of $16.559. ½ a rial is for a loss of 25 pr. 100, on the sale of the stock of goods in my establishment in Lima, to Mr. Wm Labat and of $312, on house fixtures &^{c} and of 23 pr 100. on my stock &^{c} in the Cerro de Pasco. . . . These sales were forced upon me directly, in consequence of my imprisonment and consequent inability to look after my own affairs.

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The third item of $18.000 is a compensation for the loss of my time, at the rate of $2000 pr. month, and is not more than I have a right to charge, as my books will shew, if you please to examine them, that for terms of more than a year together, my personal attention to the business has been of considerably more value to me.

The fourth and last amount of $10.000, is a very small compensation for my personal ill treatment. On the 4th [*3d*] of March 1839, immediately after the fall of the government of the Confederation, I received an order to leave the country, in four days, without having had any charge made against me, except a verbal one, of former friendship with Genl Santa-Cruz and many of his officers; and the inference which Genl Gamarra chose to draw therefrom, that I must therefore, have assisted in some way, the Gov't. of the Confederation.

Mr. Bartlett, our then acting Chargé d'Affaires, called at the Palace, in consequence of this order, and it was understood that the order, if not rescinded, should, at all events, be suspended, until Mr. Bartlett and the Minister had communicated on the subject. On the 9th, I received a second order, to leave in 24 hours, and Mr. B. supposing that the Chief Executive officer of the Department had not been advised of what had passed between him and Gen. Gamarra, made a second application in writing. On the 16th Mr. B. went on board one of our ships of war, without having received any answer to his note, and on the same day I received a message to go to the Office of the Prefect, when I was put under arrest and taken by a party of soldiers to the Castles of Callao, and placed under charge of the Governor of said Castle, with orders to put me on board the first vessel that should leave the port, for any part of the world, out of the Republic of Peru. I protested against this treatment at the time, and subsequently on the 5th of April, when I was actually taken to a Chile ship of war, for the purpose of being embarked, the officer in command would not receive me, in consequence of my protest against his receiving me as a prisoner. During some part of my arrest, I have been treated more like a convicted felon than like an American citizen, against whom no charge had been preferred. I have been lodged in a small, dirty room, with scarcely space enough for a single chair & travelling bed, and the only furniture furnished me was a table, without giving me bread or water. I have been taken as a prisoner to Lima, and confined in a common prison, and in a guard-house, to answer some charge which was never substantiated, and the real object of which I never knew; and again been sent to Callao. . . . I have had a sentinel placed at the door of my prison with orders not to allow me to see or communicate with any of my own family, or even with my servant; and although, during a part of the eight months and 28 days of my arrest, I have had the liberty of the town of Callao, I was never once allowed to go up to Lima, except on the occasion alluded to, when I was taken up and kept under greater restraint than in Callao. During the whole of this time, no charge has been made against me in any Court of Law, and I cannot consider myself more safe from personal insult than before my arrest, for although I have been detained the above mentioned time, and various applications for my release, have been made by Mr. Bartlett, that my business might not be entirely ruined, I have to this day, no permission in writing, to be at large; nothing but a verbal message from Gen: Gamarra was conveyed to me on the 14th of December last, through the under Governor of Callao; that by order of H.E. the President, I was at liberty to go where I pleased. Such treatment as this of an American citizen is equally contrary to the written laws of this country, as it is to the articles of the treaty [1] made between the U.S. & the Peru-Bolivian Confederation, and merits a compensation; and that compensation ought to be such as will place me in an equivalent situation, as to property and prospects, as that in which I was, immediately previous to my arrest.

I abstain from any further observations on this subject. My wrongs speak for themselves: Imprisoned, insulted, tried and acquitted of, I know not what;—my arrest continued and my property confiscated, without even a form of law.

Accompanying the foregoing letter of Tracy to Pickett was this account, which corresponds to the statement of the claim included in the preamble of the agreement of August 6, 1852 (*ibid.*, enclosure 3):

[1] Of November 30, 1836 (Document 82).

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The Peruvian Republic To Samuel F. Tracy Dr.

For value of two shares in the Company of Miners of Huancavelica, which, at a moderate calculation, were worth $30.000 each, $60.000		$60. 000
For loss on sale of Stock of goods to Wm Labatt in Lima, of 25 pr centum on $16.656.5½	$4 164 68	
For losses on sales of House Fixtures, from value of appraisement	312	
For loss on sale of Stock &^c in Cerro to Juan. F. Valle, of 23 pr 100. on $52.448	[1] 12. 083	
		16. 559 6¼
For probable gain, calculated rather less than the average gains of my business for the last five years, and consequently lost by my imprisonment		18. 000
For Ten thousand dollars, as a very small compensation for the most unjust and illegal manner, in which I have been treated		10. 000
		$104. 559 6¼

Total Amount of this Account, One Hundred and four thousand, five hundred and fifty nine dollars, one half rial. ($6\frac{1}{4}\,^{100}$)

Lima, 1st March 1840.

SAM[l] F. TRACY.

Correspondence and other papers relating to the origin of the claim are in D.S., 5 Consular Despatches, Lima, No. 48, March 14, 1839, and enclosure; No. 50, May 6, 1839, and enclosures; No. 56, July 16, 1839; No. 57, July 16, 1839, and enclosures; No. 59, August 5, 1839, and enclosure; No. 61, September 19, 1839, and enclosure; No. 65, October 8, 1839, and enclosures; No. 66, November 5, 1839, and enclosure 3; 6 *ibid.*, No. 69, December 22, 1839; D.S., 5 Despatches, Peru, No. 2, October 5, 1839; No. 9, March 30, 1840; No. 10, April 22, 1840, and enclosures; No. 12, May 25, 1840, and enclosures; No. 22, September 10, 1840 (the despatch of October 5, 1839, is printed in Manning, *op. cit.*, X, 489–92).

In the cited despatch of May 25, 1840, written when the claim of Tracy had first been presented to the Government of Peru, the following comments on the merits were made by Pickett:

> Mr. Tracy's claims amount to one hundred and four thousand five hundred and fifty nine dollars, 6¼ cents, ($104.559.6¼) as you will perceive from the enclosed account. The first item (of sixty thousand dollars) is for his interest in the Quicksilver Mines of Huancavelica. This, however, is rather what it may be presumed it would have been worth, eventually, than what it was actually worth, at the time he was dispossessed by the present Government of Peru.—But to explain this charge satisfactorily, it will be well to give a brief account of the Quicksilver mines and of Mining in general, in this country.
>
> The mineral territory in the province of Huancavelica, (about eighty leagues to the South of Lima) is of considerable extent, comprehending probably, not less than one hundred and fifty square miles. The ore is very abundant and of various qualities; some of it being very rich, and much of it so poor that it will not pay the expense of extracting the metal. When Peru was a Spanish colony, great quantities of quicksilver were obtained at those mines, and they were not only very productive but very profitable also. They are considered to be inexhaustible, and are supposed to be of greater value than the mines at Almaden,

[1] Twenty-three percent of $52,448 is $12,063.04.

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in Spain.[1] Since the revolution, they have not been much attended to, having been neglected as many other branches of industry have been, in this unfortunate country.

The mining interest in general, was considered to be of so much importance, that long ago, it was regulated and protected by a distinct code of laws called the Mining Code, (Codigo de Mineria) with a separate administration and separate tribunals. The title of all mines is inalienably, in the State, but grants or leases are made for indefinite terms, upon certain conditions, the principal of which are, that the working of the mine that is granted, shall be commenced without delay, and shall not be suspended, at any time, longer than a year and a day. If it should be, a forfeiture is the consequence, and the whole interest reverts to the grantor. (the State) To obtain a grant, application is made to the Government or to the Commissioners of Mines, (Diputacion de Mineria) which is called *denouncing*. Notice is thus given of the applicant's intention, so that the grant may be opposed, if there is any cause of opposition. If none is made, the grant issues, of course, and subsists as long as the conditions of it are complied with; all of which are specified in the Mining Code.

Nothing is paid to the Government by the grantee or lessee, either as a bonus or as rent, and the expense of obtaining a grant is inconsiderable. The direct benefit accruing to the State, is a net profit of about ten per centum, on the coinage of silver, including an export duty of five per centum, on dollars, which is paid at the Mint; so that the export duty is paid upon every dollar that is coined. This is a precaution against smuggling, which has been, and yet is practised, on this coast, to an almost incredible extent. The duty on coined gold is only two per centum, because it is more easily smuggled than silver. There is not much gold coined at Lima, however: The coinage of it is greater at Cuzco.

In some parts of the country, at a considerable distance from the capital, silver may be exported in bullion, the exporter paying a duty of fifty cents the *mark*, which is about five and a half per centum. Upon quicksilver and other metals and minerals, no export duties or charges of any kind are paid. There was formerly a duty of four per centum, upon every article exported from Peru, but this has been abolished.

I have stated that the title of all the mines, is inalienably, in the State; by which I do not mean to convey the idea, that they *cannot* be alienated, but that it is the ancient and settled policy, that they *shall not* be.

The grant to the Mining Company, of which Mr. Tracy was a partner, may have included, altogether, three hundred acres, or more;—the exact quantity is not known. It was made in 1837. The Company had several mining establishments, and one of them at a mine called the King's Mine, which has been long celebrated for the abundance and richness of the ore. The Company had a capital, originally, of thirty thousand dollars, divided into twenty shares, upon each of which had been paid, fifteen hundred dollars. Mr. Tracy subscribed one share and purchased another, thus becoming the proprietor of one tenth of the whole interest. In addition to the capital of thirty thousand dollars, profits, to the amount of forty thousand, were expended for fixtures, machinery &c making the whole outlay, seventy thousand dollars. All of this has been lost and Mr. Tracy's loss amounts to seven thousand five hundred dollars, he having paid two thousand for the share he purchased.

The Government of Peru will contend, probably, that it is not liable to make good Mr. Tracy's loss on this account, on the ground, that the Mines were not confiscated, and that he may still dispose of his interest in them. But this will not be reasonable, nor would the argument be plausible even. The law by which the Company was dispossessed has had every effect of a confiscation, as it was intended to have, and the clause permitting the parties interested, to sell their shares, is so little available, that I do not suppose one thousand dollars could be obtained for the whole interest. Every species of property was seized by order of President Gamarra, and is now in the possession of a new company, organized and operating, under his auspices.

[1] This supposition was quite unfounded; Pickett called it "a mistake" in his despatch of October 4, 1844, quoted below.

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The only question, it seems to me, that can become properly, a subject of discussion, as regards this charge, is, whether Mr. Tracy's actual loss, or the estimated value of his interest in the mines, shall be the criterion of compensation.

The charge of $16.559.6¼ cents, for losses on the sale of merchandise, will be objected to, probably, on the ground, that Mr. Tracy was not compelled to sell, and that his doing so being a voluntary act, he cannot have any just claim to be indemnified. It will remain then to be considered, whether the circumstances by which he was surrounded, were not, in fact, as coercive as a peremptory order to sell would have been. He had been seven or eight months under arrest, without any prospect of being either released or put upon his trial, and may be regarded, therefore, as being under the necessity of arranging and closing his business, as he best could.

The charge of $18.000 for loss of profits, whilst under arrest, Mr. Tracy states to be less than his average profits for the last five years. The sum may appear large in the United States; but in Lima, prices are high and mercantile profits are sometimes, very great.

The charge of $10.000 for personal ill treatment, requires no explanation. It will be regarded here, no doubt, as excessive, beyond all reason, but justice, as well as policy requires, that the Government of Peru should be made to know, that a citizen of the United States is not to be oppressed with impunity.

The Negotiations

Pursuant to instructions from Secretary of State Forsyth of September 5 and October 18, 1839 (D.S., 15 Instructions, Peru, 26–27), Pickett addressed a note to the Peruvian Minister of Foreign Affairs, Manuel Ferreyros, under date of May 5, 1840, setting forth the circumstances of the case and asking indemnification (D.S., 5 Despatches, Peru, No. 12, May 25, 1840, enclosure 1). In that note the total amount of the claim was stated at $104,559.06¼; and with the note was enclosed a copy of the account which had accompanied Tracy's letter to Pickett of March 1, 1840, and which is printed above. That account and the covering note of May 5, 1840, are referred to in the preamble of the agreement of August 6, 1852. The note reads thus:

The Undersigned, Chargé d'Affaires of the United States, has the honor to inform the Minister of Foreign Affairs, that he has been instructed by his Government to enquire into the correctness of the complaints of Samuel F. Tracy, a citizen of the United States, of certain arbitrary acts of the authorities of General Gamarra, and if he finds the representations of Mr. Tracy to be true, to demand satisfaction of the Peruvian Government.

The Undersigned has enquired into the circumstances of this case and finds them to be, substantially, as follows:—Mr. Tracy was arrested by order of Gen. Gamarra, (now his Excellency the President) on the 16th of March 1839, and kept under arrest until the 14th of the December following;—a period of eight months and twenty eight days. A part of the time, he was in the Castle and Arsenal at Callao, lodged in a small, filthy and unhealthy room destitute of every comfort and but ill supplied even, with fresh air. The residue of the time he was permitted to be at large in the town of Callao, but not to leave it, unless to leave the country; not even to visit his wife and children, in Lima.

Mr. Tracy, as is well known to this Government, was, at the time of his arrest, engaged in an extensive and lucrative business, as a merchant. But in consequence of that measure and of the long restraint to which he was subjected, he has been compelled to dispose of his stock of merchandise and to close his business, at a great loss, giving up involuntarily, but unavoidably, a prosperous and profitable occupation.

Among the documents enclosed (five in number) elucidating Mr. Tracy's case, is an account, in which he states his claims on Peru, amounting to One Hundred and four thousand five hundred and fifty nine dollars, 6¼ cents. ($104.559.6¼) He charges for his losses at Huancavelica, sixty thousand dollars. He charges

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also, for the losses he sustained in the sale of his stocks of merchandise, at Cerro and at Lima, for a fair average profit of which he was deprived during his imprisonment, and for the wrongs and injuries done his person.

The greatest loss sustained by Mr. Tracy has been that of his interest in the Quicksilver mines, at Huancavelica; which was two shares, or one tenth of the whole interest owned by the Company, known as the Huancavelica Mining Company, which was put in possession of the mines by a legal and regular grant from the government of General Santa-Cruz, and from the Commissioners of Mines. (Diputacion de Mineria) The measure of the present Government, which has dispossessed the late Company, though not purporting to be a confiscation, has had every consequence and effect of one. Forcible possession has been taken of the Mines, and the occupants or lessees have been compelled to abandon their property; all of which has been seized,—machinery, fixtures and apparatus of every description, moveable and immoveable; & without any judicial proceedings whatever.

The Undersigned is aware, that in the Law or Decree, by which the Government of Peru has reassumed the occupancy of the Mines, or transferred it to another company, there is a clause authorizing the former tenants to dispose, by sale, of their respective interests. But this privilege is neither valuable nor in any way available. The act obliging them to sell or alienate, deprives them, at once, of their vested legal rights. In consequence of political events and of the seizure of their property, they have dispersed. Some have been imprisoned; some have left the country, and all, probably, are obnoxious to the present Government, on account of their political opinions. How, under such circumstances, could it be supposed, that a sale could be effected, for any thing more than a mere nominal price? And who would become the purchaser, at any other price, of property sold under compulsion? Or what guarantee would the purchaser have, that he should occupy the property, quietly and undisturbed? Certainly none; for the only tenure by which he would hold, would be the will and pleasure of the existing Government,—with a certainty, perhaps, of being ejected, should another party get into power. The abandonment of the Mines, therefore, under compulsion, is to all intents and purposes, a confiscation. It has had the effect of a confiscation and is regarded as one, the privilege of selling, being an absolute nullity; for if it were possible for the parties interested, to effect a sale, they could not be under any legal obligation to do so. The wrong done them was consummated, the very moment, the decree of dispossession was promulgated, and the proper and obvious course, for a foreigner owning an interest, to pursue, was, to abandon entirely and to apply to his own Government for redress, if it should be withheld by the Gov't. of Peru; and this, Mr. Tracy has done.

For further information in relation to Mr. Tracy's interest in the Mines, and to enable this Government to form a correct opinion of their value, the Undersigned refers to a note addressed by Mr. Bartlett late United States' Consul, at Lima, to Don Manuel Rio, dated the 28th of May last.[1]

The charges for losses on sales of merchandise and for deprivation of profits, appear to be reasonable in amount. Mr. Tracy did an extensive business as a merchant, and mercantile profits are sometimes very great in Lima, as is well known.

The charge for detention, imprisonment and personal wrongs and injuries, cannot be regarded, as excessive, the Undersigned thinks, in any country, where a due estimate is placed upon the rights and liberties of a citizen; as he he trusts is done in Peru.

It should be borne in mind, that Mr: Tracy has been subjected to all the imprisonment, loss and contumelious treatment, of which he complains, without ever having been informed,—with what crime he was charged, or what offence he was supposed to have committed, except that he has heard casually, that some things were alleged against him, which are in themselves so puerile and ridiculous, that from respect to this Government, the Undersigned will not mention them to the Minister. In vain did Mr. Bartlett invite, earnestly and repeatedly, the attention of the Government to Mr. Tracy's case, and ask, that he might be released or put upon his trial, according to the laws of the country, and

[1] D.S., 5 Consular Despatches, Lima, No. 57, enclosure 5.

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the treaty [1] between the United States and Peru. His notes were not always answered even, and when they were, the answers were but little explanatory, and in no degree satisfactory. The liberty and rights of a citizen of the United States, were considered to be of so little importance, that the most respectful applications, the most emphatic appeals and earnest remonstrances, all availed nothing. But at length, after almost a year, of trouble, of sacrifices and of separation from his family, Mr. Tracy was discharged from his arrest; and he is as ignorant of the reasons of his discharge as of those of his imprisonment; all of which have been studiously withheld. And this seems to warrant the inference, that no charge could be substantiated against him; and he has been, perhaps, the victim of calumnies emanating from some unworthy and irresponsible source; for the Undersigned is wholly unprepared to believe, that the Gov't. has visited him with so much rigor, gratuitously. But if it has not, this cannot affect his claim to be indemnified for his losses and sufferings, as the Government has assumed all the responsibility, by punishing him, arbitrarily, and without any sanction of the laws of Peru; as well as in violation of the treaty with the United States.

This, to the Undersigned, is an unpleasant topic, but he has a duty to perform and it must be done. He assures the Hon: Minister that he deplores the necessity under which his Government finds itself, of being obliged to demand satisfaction of a friendly power, for wrongs inflicted on a citizen of the United States, and he enters into the discussion of this case, with no other feelings towards the Government at Lima, than those of respect and good will, and he trusts that he will be met in a corresponding temper. The case is one of much urgency: He hopes that it will receive prompt attention and that the result of an investigation of it, will be such a one as will be satisfactory to Mr. Tracy and calculated to secure to the Government of Peru, the respect and confidence of the President and people of the United States.

The Undersigned renews to the Hon. Mr. Ferreyros, the assurances of his distinguished consideration and respect.

In a despatch of May 13, 1842 (D.S., 6 Despatches, Peru, No. 61), Pickett stated that "there is not now, the slightest prospect of my being able to adjust" the Tracy claim; in a despatch of October 4, 1844 (*ibid.*, No. 102), he indicated that the disturbed condition of the country was still an obstacle to settlement and added:

It is my opinion and of course my duty to express it to you, that Mr Tracy can afford to accept considerably less than he claims, and that he would still be very fairly indemnified for his losses, &c &c He has greatly overrated the value of his interest [one tenth of the whole] [2] in the quicksilver mines at Huancavelica, of which he was deprived by Gen. Gamarra, in the year 1839. He claims on this account, sixty thousand dollars, which is entirely too much to be insisted upon. I too, in my 12th despatch, have overrated the value and importance of those mines. I there say, that they "are supposed to be of greater value than those at Almaden in Spain." This is a mistake. The mines at Almaden yield I believe, twenty thousand quintals of quicksilver annually, whereas all the mines at Huancavelica never yielded half that amount, and they have deteriorated greatly.

Pickett was succeeded by John A. Bryan, who was appointed Chargé d'Affaires to Peru on August 15, 1844; Bryan was succeeded by Albert Gallatin Jewett, appointed March 13, 1845; and Jewett was in turn succeeded by John Randolph Clay, appointed March 3, 1847.

In a despatch of January 8, 1852, Clay wrote that he had "repeatedly, pressed the different Ministers of Foreign Affairs for a settle-

[1] Of November 30, 1836 (Document 82).

[2] The brackets are in the original despatch.

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ment" without success, and he intimated that in his opinion the claim was excessive. That despatch reads in part as follows (9 *ibid.*, No. 88):

> The claim of Mr Tracy amounts to upwards of one hundred and four thousand dollars, of which the sum of sixty thousand dollars is stated to be the loss, occasioned by the confiscation of his *two* shares in the Huancavelica Mining Company. The original cost of these shares, in December 1837, was five thousand dollars, each, and he claims that they were worth $30.000. in March 1840!
>
> By reference to a Despatch from the Department to J. C. Pickett, dated 16th November 1842, it will be seen that the Secretary of State said that—"The "charge for imprisonment and maltreatment seems to be fair, but that, for "losses in his (Mr Tracy's) business need not be insisted upon, as it is supposed "to be entirely speculative and, in general, the department does not encourage "the presentation to foreign Governments of claims of that character".[1]
>
> The above extract is sufficient to shew that some doubt existed at the Department, respecting the amount that Mr Tracy was really entitled to receive, as an indemnification from the Peruvian Government. An examination of his papers convinced me that he could never recover the *whole* claim, by negotiation, and such I may add is the opinion of his "*personal* friend", the "President of the Chamber of Deputies", Mr Osma, with whom I have conversed frequently concerning Mr Tracy's claim and who has, more than once, advised me to wait until he enters upon the duties of Minister of Foreign Affairs, after the adjournment of the present Session of the Peruvian Extraordinary Congress: Mr Osma told me, that he could not name any one who would be likely to report as favorably upon the claim as himself.
>
> I have repeatedly, pressed the different Ministers of Foreign Affairs for a settlement since my arrival here; but without being able to bring them to a decision, and Mr Tracy is perfectly aware, that the settlement of the most just claim is often attended with the greatest difficulty in Peru. He has, hitherto, invariably refused or neglected to mention any sum, that he would be willing to receive to compromise his claim. Until he does this, he cannot reasonably expect that the Peruvian Government will come to any settlement.

Joaquín José de Osma, the "personal friend" of Tracy, duly became Minister of Foreign Affairs; the negotiations immediately preceding the signature of the agreement are not reported in detail but were perhaps delayed in anticipation of the liquidation of the affairs of the Huancavelica Mining Company, mentioned below; on August 6, 1852, the agreement above printed was signed by Clay and Osma.

[1] This is from D.S., 15 Instructions, Peru, 30–31; preceding the sentence quoted from the instruction were these passages:

> If, as is believed to have been the case, Mr Tracy was deprived of his interest in the quicksilver mines of Huancavelica illegally and by violence, no doubt is entertained of the obligation of the Peruvian Government to make good the loss which he thereby sustained, and that the measure of indemnification to him should be the value of his interest at the time it was confiscated. As little can it be questioned that citizens of the United States in foreign countries are entitled by the law of nations to protection in all employments permitted to them by the municipal laws of those countries.
>
> In regard to the particulars of Mr Tracy's account it may be said that the correctness of the charges for losses on sales depends upon the degree in which those sales were compulsory at the time they were made. So far as the circumstances of the case may be learned from the papers in the department, the sales could not have been avoided. The demand for this charge, however, and for its amount, whether more or less than that claimed, is left to your discretion, for being upon the spot, you have the best means of forming a just opinion upon the subject.

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THE SETTLEMENT

Regarding the terms of settlement, Clay, in his despatch of August 11, 1852, above cited, wrote as follows:

I have the honor to enclose to the Department a copy of an agreement entered into, between the Peruvian Minister of Foreign Affairs and myself, on the 6th Instant; for the final adjustment of the long pending claim of Samuel, Franklin Tracy, a citizen of the United States. Mr Tracy claimed the sum of One hundred and four thousand, five hundred and fifty nine dollars, six and one fourth cents. . . .

The Peruvian Government has agreed to pay Mr Tracy the sum of twenty six thousand, five hundred and sixty dollars; being the amount of the *three* first items of his claim; in two annual instalments—on the first of January 1854 and on the first of January 1855—with interest upon the same, at the rate of five per cent, per annum, until payment of the whole shall be made.

The Government rejected the fourth item of Eighteen thousand dollars, in toto, and I think with reason, as his time was scarcely worth $2000 pr month to him, and, besides, it allowed the sum of $10.000 for the personal injury inflicted.

With regard to the last item of sixty thousand dollars; for the loss of his two shares in the Huancavelica Mining Company; it is to be remarked that the shares were originally valued at five thousand dollars, but the whole amount was not paid in. By the charter of the Company, the Director, General Otero, and a board of two were authorised to act for the shareholders and as General Otero—(acting as the representative of the Stockholders under the clause in the charter above referred to) agreed with the Peruvian Government, to receive $74.145.37½ in bonds of the consolidated debt—as compensation for the losses sustained by the arbitrary dissolution of the Company by order of President Gamarra—Mr Tracy must, I conceive, abide by that liquidation and accept his proportion of the sum agreed upon, as satisfaction for the confiscation of his two shares. The bonds of the consolidated debt are quoted at 30 per cent in the market of Lima. If they were at par, Mr Tracy's share would I presume amount to about ten thousand dollars.

I have done the best I could for the interest of Mr Tracy, but found it difficult to obtain even the amount allowed. The preceding Administration refused to give any indemnification.

Thus the first three items of the claim as stated in the preamble of the agreement, were allowed in full, in the sum of $26,560 "current money of Peru"; the fourth item, of $18,000, for loss "of time and on his business" during Tracy's detention, was disallowed; and the fifth item, of $60,000, for loss on two shares of stock in the Huancavelica Mining Company, was omitted for the reasons stated in the despatch last quoted. A copy, in Spanish, of the arrangement made between the Government of Peru and General Francisco de Paula Otero, Director of the Huancavelica Mining Company, for the liquidation of the affairs of the company, which is dated July 15, 1852, three weeks prior to the signature of the agreement of August 6, 1852, and which is referred to in the text thereof, was an enclosure with Clay's despatch of September 11, 1852 (D.S., 9 Despatches, Peru, No. 109). That paper reads in translation as follows:

LIMA, *July 15, 1852.*

Having viewed this case with the statement made by the Court of Accounts and the observations of the Fiscal of the Supreme Court of Justice, and it having been shown that the capital formed by the company amounts to $27,468 and the profits calculated in its favor to $66,426; that General Otero received $7,275 and Don Demetrio Olavegoya $5,637, which two items amount to $19,912 [*$12,912*]; which, deducted from the $93,894 to which the first two amount, leave a remainder of $80,982; subtracting further the $2,000 of the share of the Potosí Bank and the

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$4,836 4½ reals which are due to this share from the profits in the proper proportion, that is, $6,836 4½ reals, there results a net credit due of $74,145 3½ reals—this is the amount which can be considered as of the state's liability; and considering that in the computation of the gains expressed, the charge is admitted which is made by the parties interested in this business without any objection whatever: that the Government has no power to declare the right to revenues on the amount in question in the past, and that the company was not encumbered with rent or annuity of any kind. For all the reasons set forth, the $74,145 3½ reals stated is recognized as national debt in favor of the partners of the dissolved Huancavelica Company, represented by its former manager, Francisco de Paula Otero. Pass to the Consulate Court for the granting of the consolidation bonds: cancel and file.

Flourish of His Excellency MENDIBURU

With regard to his apportionment under that liquidation arrangement, Tracy wrote to Secretary of State Marcy on October 11, 1855, as follows (D.S., Miscellaneous Letters, October 1855):

A large item of the claim made by the undersigned, was permitted by the United States Minister to be merged in a claim represented by sundry Peruvian citizens; the result of which was the apportionment to the undersigned of only *5,600 Dollars*,—whereas the actual amount invested, with interest at the rate current in that country, was more than *10.200* Dollars. For this 5.600 dollars, a certificate of debt called "*Consolidated*", was issued in the name of the undersigned, bearing interest at the rate of six per cent, per annum, but no time being fixed for the payment of the principal of the debt. The interest on said 5.600 dollars, has been paid only to the 1st of January 1854.

The market value in Lima of this consolidated paper has varied from 25 to 30 per cent, but it at present has little or no market value.

The agreement of August 6, 1852, contained no provision for ratification by either Government. It received the "approval" of the President of Peru on August 19, 1852 (D.S., 9 Despatches, Peru, No. 109, and enclosure); but it seems that it was not submitted to the Congress of Peru (12 *ibid.*, No. 280, October 24, 1855, enclosure).

EXECUTION OF THE AGREEMENT

Articles 1 and 2 of the agreement provided for the payment by the Government of Peru of $26,560 "current money of Peru" in two instalments of $13,280 each, payable January 1, 1854, and January 1, 1855, with interest at the rate of 5 percent from the date of the agreement.

On January 21, 1854, the first instalment, amounting, with interest, to $15,142.87½, was paid to Alsop & Company, agents of the claimant (D.S., 11 Despatches, Peru, No. 250, March 9, 1855, enclosure).

On February 17, 1855, Clay addressed to the Minister of Foreign Affairs a note requesting payment of the second instalment, with interest "to the present date", which, he stated, amounted to $14,031.50 (*ibid.*). Thereafter Clay "brought the subject repeatedly to the notice of the Minister of Foreign Affairs" (12 *ibid.*, No. 274, September 10, 1855); on October 16, 1855, the President of Peru issued an order for the payment of that instalment (*ibid.*, No. 280, October 24, 1855, and enclosure). Clay was informed that the money, including interest, would be paid at the Treasury in the following November (*ibid.*). Presumably payment was made to Alsop & Company accordingly, as nothing further on the subject is to be found in the despatches.

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Treaty Series No. 252
10 Statutes at Large, 982-86
18 *ibid.*, pt. 2, Public Treaties, 544-46

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NETHERLANDS : AUGUST 26, 1852

Convention Additional to the Treaty of January 19, 1839 (Document 87), and Substitutionary for Articles 1 and 2 Thereof, signed at Washington August 26, 1852. Original in English and Netherlandish. Submitted to the Senate August 30, 1852. (Message of August 27, 1852.) Resolution of advice and consent February 17, 1853. Ratified by the United States February 21, 1853. Ratified by the Netherlands January 11, 1853. Ratifications exchanged at Washington February 25, 1853. Proclaimed February 26, 1853.

The United States of America and His Majesty the King of the Netherlands, being desirous of placing the commerce of the two countries on a footing of greater mutual equality, have appointed as their Plenipotentiaries for that purpose; that is to say: the President of the United States of America, Daniel Webster, Secretary of State of the United States, and His Majesty the King of the Netherlands, François Mathieu Wenceslas Baron Testa, Commander of the Royal Grand Ducal Order of the Crown of Oak of Luxembourg, Knight of the Royal Order of the Lion of the Netherlands, and of the Grand Ducal Order of the White Falcon, Third Class; Counsellor of Legation, and His Majesty's Chargé d'Affaires to the Government of the United States of America; who, after having communicated

De Vereenigde Staten van Amerika en Zijne Majesteit de Koning der Nederlanden, den handel tusschen de beide landen wenschende te brengen op eenen voet van grootere wederkeerige gelijkheid, hebben daartoe tot hunne Gevolmagtigden benoemd, te weten: de President der Vereenigde Staten van Amerika, Daniel Webster, Secretaris van Staat der Vereenigde Staten; en Zijne Majesteit de Koning der Nederlanden, François Mathieu Wenceslas Baron Testa, Kommandeur der Orde van de Eikenkroon van Luxemburg, Ridder der Orde van den Nederlandschen Leeuw, Ridder der Groot Hertogelijke Orde van den Witten Valk, 3e Klasse, Raad van Legatie, en Hoogstdeszelfs Zaakgelastigde bij de Regering der Vereenigde Staten van Amerika: Dewelke, na elkander hunne in goeden en behoorlijken

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to each other their respective powers, found in good and due form, have agreed that, for and in lieu of the first and second articles of the treaty[1] of commerce and navigation signed at Washington on the 19th of January, 1839, between the High Contracting Parties, the following articles shall be substituted:

ART. I.

Goods and merchandise, whatever their origin may be, imported into, or exported from, the ports of the United States, from and to any other country, in vessels of the Netherlands, shall pay no higher or other duties than shall be levied on the like goods and merchandise imported or exported in national vessels. Reciprocally, goods and merchandise, whatever their origin may be, imported into or exported from the ports of the Netherlands, from and to any other country, in vessels of the United States, shall pay no higher or other duties than shall be levied on the like goods and merchandise imported or exported in national vessels.

The bounties, drawbacks, and other privileges of this nature, which may be granted in the States of either of the Contracting Parties, on goods imported or

vorm bevondene wederzijdsche volmagten te hebben medegedeeld, zijn overeengekomen, dat, voor en ter vervanging van het eerste en tweede artikel van het handels- en scheepvaart verdrag,[1] den 19 Januarij 1839, te Washington, tusschen de Hooge Contracterende Partijen geteekend, de volgende artikelen zullen worden in de plaats gesteld:

ART. I.

Goederen en koopwaren, overschillig welke derzelver herkomst zij, met Nederlandsche schepen wordende in of uitgevoerd, in of de havens der Vereenigde Staten, van en naar elk ander land, zullen geene hoogere noch andere regten betalen, dan zullen worden geheven op gelijke goederen en koopwaren in- of uitgevoerd met nationale schepen. Wederkeerig, zullen goederen en koopwaren, onverschillig welke derzelver herkomst zij, met schepen van de Vereenigde Staten wordende in of uitgevoerd in of uit de havens der Nederlanden, van en naar elk ander land, geene hoogere of andere regten betalen, dan zullen worden geheven op gelijke goederen en koopwaren in of uitgevoerd met nationale schepen.

De premiën, teruggave van regten en andere voorregten van dien aard, in de Staten van eene der Contracterende Partijen aan den in of uitvoer met nationale sche-

[1] Document 87.

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exported in national vessels, shall also and in like manner be granted on goods imported or exported in vessels of the other country.

ART. II.

The above reciprocal equality in relation to the flags of the two countries is understood to extend also to the ports of the colonies and dominions of the Netherlands beyond the seas, in which goods and merchandise, whatever their origin may be, imported or exported from and to any other country in vessels of the United States, shall pay no higher or other duties than shall be levied on the like goods and merchandise imported or exported from and to the same places in vessels of the Netherlands. The bounties, drawbacks, or other privileges of similar denomination which may be there granted on goods and merchandise imported or exported in vessels of the Netherlands, shall also and in like manner be granted on goods and merchandise imported or exported in vessels of the United States.

ART. III.

Neither party shall impose upon the vessels of the other, whether carrying cargoes or arriving in ballast from either of the two countries, or any other country, any duties of tonnage, harbor dues, lighthouse, salvage, pilot-

pen toegekend, zullen insgelijks en op dezelfde wijze verleend worden aan goederen in of uitgevoerd met schepen van het andere land.

ART. II.

De voormelde wederkeerige gelijkstelling van de vlaggen der beide Staten strekt zich almede uit tot de havens der Nederlandsche Kolonien en overzeesche Bezittingen, in welke havens goederen en koopwaren, onverschillig welke derzelver herkomst zij, in of uitgevoerd van en naar elk ander land met schepen van de Vereenigde Staten, geene hoogere of andere regten zullen betalen, dan geheven zullen worden op gelijke goederen en koopwaren van of naar dezelfde plaatsen met Nederlandsche Schepen in of uitgevoerd.

De premien, teruggave van regten en andere voorregten van dien aard, aldaar toegekend aan goederen en koopwaren met Nederlandsche schepen in of uitgevoerd, zullen insgelijks en op dezelfde wijze verleend worden aan goederen en koopwaren met schepen van de Vereenigde Staten wordende in of uitgevoerd.

ART. III.

Geene der Partijen zal op de schepen der andere, hetzij dezelve ladingen aan brengen of in ballast aankomen, van een der beide landen of van elk ander land, eenige regten heffen voor tonnen- haven- baken- berg of redding-

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age, quarantine, or port charges of any kind or denomination, which shall not be imposed in like cases on national vessels.

ART. IV.

The present arrangement does not extend to the coasting trade and fisheries of the two countries respectively, which are exclusively allowed to national vessels; it being moreover understood that, in the East Indian Archipelago of the Netherlands the trade from island to island is considered as coasting trade, and likewise in the United States, the trade between their ports on the Atlantic and their ports on the Pacific; and if, at any time, either the Netherlands or the United States shall allow to any other nation the whole or any part of the said coasting trade, the same trade shall be allowed on the same footing, and to the same extent, to the other party. It being however expressly understood and agreed that nothing in this article shall prevent the vessels of either nation from entering and landing a portion of their inward cargoes at one port of the other nation, and then proceeding to any other port or ports of the same, to enter and land the remainder, nor from preventing them in like manner from loading a portion of their outward cargoes at one port and proceeding to another port or ports to com-

loon, loods, quarantaine of havengelden, van welke soort of benaming ook, welke in gelijke gevallen niet zullen worden gelegd op nationale schepen.

ART. IV.

De tegenwoordige overeenkomst strekt zich niet uit tot den kusthandel en tot de visscherijen van elk der beide landen, welke uitsluitend vergund zijn aan nationale schepen; zijnde men daarenboven overeengekomen, dat, met opzigt tot den Nederlandschen Oost-Indischen Archipel, de handel van het eene eiland op het andere beschouwd wordt als kusthandel, en evenzoo, met opzigt tot de Vereenigde Staten, de handel tusschen de havens dier Staten aan den Atlantischen Oceaan en die aan de Stille Zuidzee gelegen; bijaldien echter, te eeniger tijd, hetzij de Nederlanden, hetzij de Vereenigde Staten, aan eenige andere natie den geheelen of eenig gedeelte van gezegden kusthandel zullen toestaan, dan zal diezelfde handel op gelijken voet en in dezelfde uitgestrektheid ook aan de andere Partij worden toegestaan. Niettemin is uitdrukkelijk overeengekomen en goedgevonden, dat niets van het in dit artikel bepaalde de schepen der beide natien zal verhinderen een gedeelte van hunne ten invoer bestemde lading in eene haven van de andere natie binnen te brengen en te lossen, en daarna naar eene andere haven

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plete their lading, such landing or lading to be done under the same rules and regulations as the two Governments may respectively establish for their national vessels in like cases.

ART. V.

The above reciprocal equality in relation to the flags of the two countries is not understood to prevent the Government of the Netherlands from levying discriminating duties of import or export in favor of the direct trade between Holland and her colonies and dominions beyond the seas; but American vessels engaged in such direct commerce, shall be entitled to all the privileges and immunities, whether as regards import or export duties, or otherwise, that are or may be enjoyed by vessels under the Dutch flag. Likewise, the United States shall continue to levy the discriminating duties imposed by the present tariff on teas and coffee, in favor of the direct importation of these articles from the place of their growth, but also without dis-

of naar andere havens van dezelfde natie te vertrekken, om aldaar het overige der lading binnen te voeren en te lossen; noch hen zal beletten, op gelijke wijze, een gedeelte van hunne ten uitvoer bestemde lading in eene haven binnen te nemen, en dan naar eene andere haven of naar andere havens te vertrekken, om hunne lading aantevullen; moetende zoodanig lossen of laden geschieden volgens de verordeningen en bepalingen als door de beide Regeringen respectivelijk zullen zijn vastgesteld voor hunne nationale schepen in gelijke gevallen.

ART. V.

De voormelde wederkeerige gelijkstelling, met opzigt tot de vlaggen der beide Landen, wordt niet beschouwd het Nederlandsche Gouvernement te beletten, differentiële regten van in of uitvoer te heffen ten gunste van het regtstreeksch verkeer tusschen Nederland en zijne Kolonien en Overzeesche Bezittingen; doch Amerikaansche schepen, tot dat regtstreeksch verkeer gebezigd, zullen geregtigd zijn tot alle de voordeelen en vrijstellingen, met opzigt tot de regten van in en uitvoer, als anderszins, welke door Schepen onder Nederlandsche vlag varende worden of zullen worden genoten. Evenzoo zullen de Vereenigde Staten voortgaan te heffen de differentiële regten bij het tegenwoordig tarief gelegd op thee en koffij ten gunste

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criminating between the flags of the two countries. And if, at any time, the Netherlands or the United States shall abolish the said discriminating duties, it is understood that the same shall be in like manner abolished in relation to the commerce of the other country.

van den regtstreekschen invoer dier artikelen van de plaats hunner voortbrenging; maar zonder, evenmin, onderscheid te maken tusschen de vlaggen der beide Landen. En, bijaldien, te eeniger tijd, Nederland of de Vereenigde Staten mogten besluiten gezegde differentiële regten afteschaffen, zoo is men overeengekomen, dat die regten op dezelfde wijze zullen afgeschaft zijn ook met betrekking tot den handel van het andere land.

ART. VI.

The present convention shall be considered as additional to the above mentioned treaty of the 19th of January, 1839, and shall, altogether with the unmodified articles of that treaty, be in force for the term of two years, commencing six weeks after the exchange of the ratifications; and further until the end of twelve months after either of the Contracting Parties shall have given to the other notice of its intention to terminate the same: each of the Contracting Parties reserving to itself the right of giving such notice to the other, after the expiration of the said term of two years. And it is hereby mutually agreed that, in case of such notice, this convention, and all the provisions thereof, as well as the said treaty of 19th January, 1839, and the provisions thereof, shall, at the end of the said twelve months altogether cease and determine.

ART. VI.

De tegenwoordige overeenkomst zal beschouwd worden als te behooren tot het bovenvermelde traktaat van 19 Januarij 1839, en zal, met en benevens de ongewijzigde artikelen van dat traktaat, in kracht blijven voor den tijd van twee jaren, aanvangende zes weken na de uitwisseling der ratificatien, en verder tot aan het eind van twaalf maanden, na dat eene der beide Contracterende Partijen aan de andere kennis zal gegeven hebben van hare bedoeling om de overeenkomst te doen eindigen: behoudende elke van de Contracterende Partijen zich het regt voor, om, na het eindigen van den opgemelden termijn van twee jaren, zoodanige kennisgeving aan de andere Partij te doen. En is men hierbij wederzijds overeengekomen, dat, in geval van zoodanige kennisgeving, deze overeenkomst en het traktaat van

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ART. VII.

The present convention shall be ratified, and the ratifications shall be exchanged at Washington within six months of its date, or sooner, if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done, in duplicate, at the City of Washington, this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and fifty-two.

DAN[l] WEBSTER [Seal]

F[s] TESTA [Seal]

19 Januarij 1839 met het einde der bovengedachte twaalf maanden gezamenlijk zullen ophouden en vervallen.

ART. VII.

De tegenwoordige overeenkomst zal bekrachtigd worden, en de ratificatien zullen uitgewisseld worden, te Washington, binnen zes maanden na de teekening of, zoo mogelijk vroeger.

Ter oorkonde waarvan de wederzijdsche Gevolmagtigden dezelve hebben geteekend, en hunne cachetten daarop gesteld

Gedaan in duplicaat, in de Stad Washington, den zes en twintigsten dag van de maand Augustus van het jaar van onzen Heer een duizend acht honderd en twee en vijftig.

F[s] TESTA [Seal]

DAN[l] WEBSTER [Seal]

NOTES

The signed original of this convention is written in the two languages, with the English on the left pages. Therewith are the duplicate United States instrument of ratification of February 21 and the original proclamation of February 26, 1853, which are in customary form. Also in the treaty file are the attested resolution of the Senate of February 17 and the certificate, in English only, of the exchange of ratifications at Washington on February 25, 1853.

The Netherland instrument of ratification is dated January 11, 1853. The text of the convention therein included is in the two languages, with the English in the right columns. In that text the King of the Netherlands is named first (twice) in the preamble, and the indicated signature of the Plenipotentiary of the Netherlands is at the left following each version of the convention. This instrument has the wafer seal, although for the ratification of the convention of January 22, 1855 (10 Statutes at Large, 1150–57), the seal appendant was used.

The presidential message of August 27, 1852, wherewith this convention was submitted to the Senate, was not there read until August

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30, the day before final adjournment of the first session of the Thirty-second Congress; there were no accompanying papers; at the following session advice and consent were given on February 17, 1853, by 34 votes to 5 (see Senate Confidential Executive Document No. 61, 32d Congress, 1st session, 29 Regular Confidential Documents, 447–53; Executive Journal, VIII, 447, 448; IX, 9, 32–33).

The Full Powers

In the preamble of the convention is the usual mention of the communication of the respective full powers; that of the Netherland Plenipotentiary, Baron François Mathieu Wenceslas Testa, Chargé d'Affaires at Washington, had been received by him by April 13, 1852 (note of that date in D.S., 3 Notes from the Netherland Legation); but neither the original nor a copy has been found in the archives of the Department of State. The full power granted to Secretary of State Webster, which included authority to treat on extradition,[1] was in this form (D.S., 3 Credences, 421):

Millard Fillmore, President of the United States of America,

To all whom these presents shall concern, Greeting!

Know Ye, That I have given and granted, and do hereby give and grant, to Daniel Webster, Secretary of State of the United States, full power and authority, and also general and special command, to meet and confer with the Chargé d'Affaires of His Majesty the King of the Netherlands residing in the United States, he being furnished with like power and authority, and with him to agree, treat, consult, and negotiate of and concerning commerce and navigation between the United States and the Government of the Netherlands, and all matters connected therewith, and of and concerning the mutual giving up by the two Governments of criminals, fugitives from justice, in certain cases; and to conclude and sign a treaty or treaties, convention or conventions, touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate thereof, if such advice and consent be given.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the city of Washington, the eleventh day of May, A.D. 1852, and of the Independence of the United States the seventy-sixth.

(L.S.)

Millard Fillmore.

By the President:
W. Hunter,
Acting Secretary of State.

The Exchange of Ratifications

The time allowed for the exchange was six months from signature (Article 7) or until February 26, 1853; under date of December 27, 1852, the Netherland Chargé d'Affaires at Washington wrote from The Hague to Secretary of State Everett that the convention had

[1] Negotiations for an extradition convention carried on at about this time were unsuccessful; not until May 29, 1856, was a convention on the subject signed (D.S., Unperfected P2); following amendments proposed thereto by the Senate, another convention was signed on August 21, 1857 (D.S., Unperfected Q2); but the first extradition convention between the United States and the Netherlands to go into force was that of May 22, 1880 (21 Statutes at Large, 769–75).

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been approved by the two Chambers of the States-General (D.S., 3 Notes from the Netherland Legation); and on the following January 15 Testa wrote that, in view of his absence from Washington, the Netherland Consul General at New York, John C. Zimmerman, would be charged with the exchange (*ibid.*). On February 7 Zimmerman, transmitting Testa's note of January 15, wrote that he was expecting to receive the Netherland ratification (*ibid.*); the Senate did not act until February 17; and Everett then fixed February 25 as the date for the ceremony (see D.S., 6 Notes to the Netherland Legation, 76–77, February 9 and 19, 1853).

The Negotiations

By two laws of the Netherlands, Nos. 47 and 48, of August 8, 1850, radical changes were made in the commercial system of that country.[1]

With a covering note of September 13, 1850, the Chargé d'Affaires of the Netherlands at Washington, Baron Testa, transmitted to Secretary of State Webster a copy of a communication received from the Minister of Foreign Affairs of the Netherlands, Herman van Sonsbeeck, giving an account of the recent enactments and their effect; this communication, which was dated at The Hague August 27, 1850, follows (D.S., 3 Notes from the Netherland Legation, revised translation from the French):

The Hague, *August 27, 1850.*

Baron: The navigation laws which have just been adopted by the Chambers and approved by His Majesty the King, and execution of which is set for September 15 next for European ports and January 1, 1851, for the colonial ports of the Kingdom of the Netherlands, have made an essential modification in the Netherland commercial legislative system which has been in force hitherto.

As this modification relates to the manner in which foreign vessels shall be treated henceforth in the maritime ports of the Netherlands, it will perhaps not be superfluous to furnish you with some details on the advantages which the new legislative provisions offer them in this respect.

I beg you to be good enough to communicate this information to the Government to which you are accredited, and authorize you to leave with it a copy of this despatch.

Since the definitive organization of the customs system of the Kingdom in 1822, the national flag has constantly been under a protective system. This protection, although generally quite moderate, was not without a certain importance, especially with respect to several bulky products, such as grains, salt, sugar, coal, cotton, et cetera. At the same time, the colonial trade was almost exclusively reserved to the national flag, since the latter enjoyed a complete immunity from duties in the ports of the mother country and a notable reduction of such duties in those of the colony.[2]

It is true that through various commercial treaties several foreign flags have been successively assimilated to the national flag, but this assimilation has never affected anything but direct navigation between the ports of the Netherlands and those of the states with which said treaties were concluded. Likewise, the provisions which restricted the relations between the mother country and her most important colonies almost exclusively to Netherland vessels had never been the subject of the least exception.

[1] The texts of those two laws are in Staatsblad van het Koningrijk der Nederlanden, 1850; they were occasionally respectively referred to at the time as laws A and B; French translations thereof, omitting the schedules to Article 4 of law A, are in 42 British and Foreign State Papers, 1271–74, footnote.

[2] The French word is here in the singular.—*Translator's note.*

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With this system, which had penetrated all parts of the customs legislation of the country and which related as well to the charges weighing upon the vessels proper as to the duties which are collected on the goods, the new laws have now completely broken.

Without stopping at a system of reciprocity, and putting aside any halfway term between the opposing principles as well as any purely provisional measure, they have abolished in principle all the distinctions established hitherto between the national flag and that of foreign countries and have now decreed the admission of any vessel into the ports of the Netherlands on a footing of complete and unrestricted equality.

It is only with respect to navigation between the European ports of the Netherlands and those of its colonies, as well as with respect to colonial navigation in general, that the new law has seen fit to maintain a few reservations, the disadvantages of which, moreover, may be avoided by the other states if they wish.

Assimilation to the national flag will not be granted on this point except to vessels of the states which offer to the Netherland flag complete reciprocity and which will abstain, furthermore, from any measure unfavorable to the products or the commerce of the Netherland colonies.

In no case, however, can this assimilation be extended to include the cabotage of the colonies, the exclusive enjoyment of which is, in conformity with the principles accepted among almost all maritime nations, reserved to the national flag.

The importance of the measure which I have just sketched for you is seen to be still further increased by two other legislative provisions which were passed at the same time and which are closely related thereto.

As the consequence of the first, all transit duties are abolished. Even, in order to remove any obstacle to the free passage of goods through its territory, the Netherlands has waived, at least provisionally, the collection of navigation and ship dues [1] which the convention of March 31, 1831, concluded between the riparian states of the Rhine, accorded it.

As an effect of the second, the monopoly hitherto reserved to the shipyards of the Netherlands for the construction of national vessels has been abolished. Henceforth, by a moderate registration fee, Netherland owners will be able to obtain nationalization of their vessels built in foreign countries.

In amending thus essentially its navigation code, the King's Government, faithful to its duty, has had in view only the enlightened interest of the country and the prosperity of its trade.

It nevertheless seems to it that these measures, although conceived in a purely national interest, offer at the same time real advantages to the trade and navigation of foreign states.

It cherishes the thought, also, that they cannot but exercise a salutary influence on international relations by strengthening those bonds of reciprocal good will which it values so highly.

Hence it dares flatter itself that the present communication cannot fail to be favorably received by the Government to which you are accredited.

In conclusion, I believe that it will not be superfluous to enter again into some developments of the general principles on which the Government means to base its action for the putting into execution of the provisions relative to the assimilation of foreign vessels, except for the modifications which existing treaties or other special circumstances might require.

So far as concerns navigation between the European ports of the Kingdom and foreign ports, the Government intends to begin by rendering such assimilation as complete and general as possible. Convinced of the immense advantages that freedom of navigation, generally recognized, would bring for trade, it believes that it serves best the cause which it has espoused by giving to this principle the widest and most unrestricted application.

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[1] French, *droits de reconnaissance*, which is literally "recognition dues"; this follows the French of Article 14 of the Rhine Convention signed at Mainz on March 31, 1831, for which see 18 British and Foreign State Papers, 1076–1118, at p. 1084. The equivalent word in the German version of that convention is *Schiffsgebühr*, or "ship dues" (see Von Martens, Nouveau recueil de traités, IX, 252–312, at p. 264).—*Translator's note.*

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Nevertheless, although it would not deviate except with regret from a line of conduct in conformity with its personal views as well as the spirit of the new legislation, it cannot but state that the advantages which it offers on its part to every foreign flag give it titles which the interests of its flag might some day require it to claim.

If the maritime interests of any state should not permit it yet to adopt a system like the one which has just been sanctioned by the Netherland law, the King's Government would consult experience before examining seriously the question as to whether the interests of its nationals would require it to use the powers which the law confers upon it to take reprisals, if necessary.

But what no state can justly refuse henceforth to the Netherland flag is treatment on the footing of the most favored nation, even in the case where no treaty of commerce assures it such right.

It cherishes the belief, however, that no such refusal could occur.

As to navigation between the ports of the Netherlands and those of its colonies, as well as colonial navigation in general, the law itself admits the application of the principle of equality of flags only in case of reciprocity. It even indicates precisely the conditions required to constitute the reciprocity which it asks. It is therefore sufficient to copy these provisions.

Now, here are three required conditions:

It is necessary, first of all, that the state which wishes to share in the advantages reserved to the Netherland flag in colonial navigation, assimilate completely the Netherland flag to its own in all its ports, both as to entry and departure, with exception, nevertheless, of cabotage and fishing.

It is further necessary that it extend such assimilation to colonial navigation, so far as it may have colonies.

Finally, it must refrain from collecting, to the disadvantage either of the products of the Netherland colonies or of any exotic product exported from the ports of the Netherlands, any differential duties other than those introduced in favor of its own colonies or their direct importation.

This last condition perhaps requires a few further explanations. In order to meet it, it is not sufficient that the state which claims to satisfy it admit the products of the Netherland colonies on an equality with any similar product, such as sugar from Habana or coffee from Brazil; it is also necessary that it admit all exotic products, those of Brazil and Habana as well as those of the Netherland colonies, coming from warehouses of the Netherlands, on the same footing as if they arrived directly from the countries of origin. This rule permits of no exceptions except with respect to states which themselves have colonies. Such states may exceptionally reduce the duties on the products from such colonies; they may even completely eliminate them; they may, lastly, without being wanting in the reciprocity required, admit them on a more favorable footing, if they come to them directly from such colonies, than when they have passed through the warehouses of another country.

Thus the Government has only to examine whether the legislation of a certain state meets the conditions specified by the law.

It will be content to await the claims which are addressed to it by Governments deeming themselves interested, purposing to devote to the examination thereof all the necessary diligence in order to cause all flags whose titles are recognized as valid to share as soon as possible in the benefits of the new law.

In any case, however, the assimilation will not be due until the day when the validity of such titles is recognized by royal order.

I hope that these explanations will suffice to put you in a position to furnish all information which may still be asked of you.

Nevertheless, if the Government to which you are accredited should still harbor the least uncertainty on the meaning and effect of the above-mentioned provisions, I beg you to be good enough to inform me immediately.

For my part, I shall hasten to transmit to you as soon as possible the new information which may be deemed needful.

Accept, Baron, the assurance of my distinguished consideration.

H. VAN SONSBEECK

BARON TESTA,

Counselor of Legation, Chargé d'Affaires of His Majesty the King of the Netherlands in the United States of America, Washington.

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At this time it was, and for more than two decades it had been, the settled policy of the United States, subject to reciprocity, to accord national treatment to vessels of other flags, with their cargoes; to all countries not discriminating by tonnage duties or otherwise against commerce of the United States there had been offered similar freedom from discriminating duties by the act of May 24, 1828, the first section of which reads thus (4 Statutes at Large, 308–9; now United States Code, title 46, ch. 5, sec. 141):

> That, upon satisfactory evidence being given to the President of the United States, by the government of any foreign nation, that no discriminating duties of tonnage or impost are imposed or levied in the ports of the said nation, upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise, imported in the same from the United States, or from any foreign country, the President is hereby authorized to issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost, within the United States, are, and shall be, suspended and discontinued, so far as respects the vessels of the said foreign nation, and the produce, manufactures, or merchandise imported into the United States in the same, from the said foreign nation, or from any other foreign country: the said suspension to take effect from the time of such notification being given to the President of the United States, and to continue so long as the reciprocal exemption of vessels, belonging to citizens of the United States, and their cargoes, as aforesaid, shall be continued, and no longer.

Other statutes then in force are to be mentioned; discriminating tonnage duties had been suspended as to vessels of the Netherlands by the act of January 7, 1824 (4 Statutes at Large, 2–3); coffee grown in the Netherland colonies and dependencies, imported from the Netherlands in either Netherland or American vessels, was free of duty (act of August 3, 1846; 9 *ibid.*, 49–50); by schedule I of the tariff act of July 30, 1846 (*ibid.*, 42–49), "coffee and tea, when imported direct from the place of their growth or production, in American vessels, or in foreign vessels entitled by reciprocal treaties to be exempt from discriminating duties, tonnage, and other charges, coffee, the growth or production of the possessions of the Netherlands, imported from the Netherlands in the same manner", were exempt from duty; by section 3 of that statute a duty of 20 percent was levied on all imports "not specially provided for"; and section 11 of the act of August 30, 1842 (5 *ibid.*, 548–67), reads thus:

> That an addition of ten per centum shall be made to the several rates of duties by this act imposed, in respect to all goods, wares, and merchandise, on the importation of which, in American or foreign vessels, a specific discrimination between them is not herein made, which, from and after the time when this act shall take effect and go into operation, shall be imported in ships or vessels not of the United States; and a further addition of ten per centum shall be made to the several rates of duties imposed by this act on all goods, wares, and merchandise, which shall be imported from any port or place east of the Cape of Good Hope, in foreign vessels: *Provided*, That these additional duties shall not apply to goods, wares, or merchandise, which shall be imported after the day that this act goes into operation, in ships or vessels not of the United States, entitled by treaty, or by any act or acts of Congress, to be entered in the ports of the United States, on the payment of the same duties as shall then be paid on goods, wares, or merchandise, imported in ships or vessels of the United States.

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So far as concerned the "direct" trade between the ports of the United States and those of the Netherlands in Europe, there had been complete reciprocal equality under Articles 1 and 2 of the treaty of January 19, 1839 (Document 87); but "indirect" trade (e.g., French produce in a Netherland ship from Bordeaux to New York) was not covered by that treaty.

Reciprocal national treatment of vessels and cargoes being thus possible under the laws of the two countries, the Netherland Government proposed action by the President [1] under the statute of May 24, 1828 (quoted above); Testa put the proposal forward in this note of December 5, 1850 (D.S., 3 Notes from the Netherland Legation, revised translation from the French):

The undersigned, Chargé d'Affaires of His Majesty the King of the Netherlands in the United States of America, has the honor to set forth the following to the Honorable Daniel Webster, Secretary of State of the United States:

The new navigation laws [2] of the Netherlands, and particularly law A, of August 8, 1850, No. 47, by eliminating in principle all the distinctions established hitherto between the national flag and foreign flags and by decreeing the admission of all vessels into the ports of the Netherlands on a footing of perfect and unrestricted equality, have by that very fact placed the trade, both direct and *indirect*, of foreign nations on the same footing as that of nationals in the ports of the Netherlands.

This is also shown by the tenor of the despatch [3] from His Excellency the Minister of Foreign Affairs at The Hague to the undersigned under date of August 27 last, No. 30, and which the undersigned, complying with instructions from his Government, had the honor to communicate to the Government of the United States by note of September 13 last, accompanied with a copy of the said despatch.

A royal decree of August 24, 1850, No. 53, in response to the recommendation of Article 9 of the above-mentioned law of August 8, fixed September 15 last as the time at which the new navigation laws, and particularly the said law of August 8, would be put into force and receive their execution in the ports of the Netherlands in Europe; in such manner that since that time, that is, for more than two months and one half, all vessels that have entered the ports of the Kingdom in Europe have been treated, with respect to both the vessel itself and its cargo, on the same footing as national vessels.

The vessels of the United States have, as a natural consequence, shared in this advantage and have thus found themselves placed, since the date of September 15 last, in a more favorable situation than what would be given them by the Treaty of Commerce and Navigation [4] between the Netherlands and the United States of January 19, 1839, which, as it is almost superfluous to remark to the Secretary of State, stipulates, reciprocally, treatment on a national footing only for direct trade between the ports of the Kingdom of the Netherlands in Europe and those of the United States.

In this state of affairs, and considering the laws relative to the matter in force in the United States, it seems that the Netherlands would have the right to demand reciprocity, that is, that in the ports of the United States the vessels of the Netherlands, *in respect of indirect trade*, as has already been the case, by virtue of the treaty, in respect of direct trade, should be, with regard both to the vessels proper and to their cargoes, treated on the same footing as American vessels.

The undersigned sees himself obliged to call the attention of the Secretary of State to this point, especially as recently, in the port of New York, goods coming

[1] For a list of proclamations regarding tonnage and discriminating duties, some of which issued under the act of May 24, 1828, see the preliminary print of volume 1 of this edition, pp. 169–71.

[2] Cited above.

[3] Quoted above.

[4] Document 87.

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from Halifax, England, in a Netherland vessel, were subjected by the collector of customs to the payment of an additional duty. He has all the more hope that the adjustment of this matter can take place without difficulty and without delay, as he believes that he sees in the powers conferred upon the President of the United States by the act of Congress of May 24, 1828,[1] the means of correcting the inequality of treatment which he points out.

To avoid any misunderstanding the undersigned deems that he should further remark that, with respect to the colonies and the other overseas possessions of the Netherlands, the new navigation laws, in the terms of the royal decree of August 24 last, receive their execution only on and after January 1 next. As to the new advantages accorded by these laws to foreign nations in colonial navigation, and with respect to the conditions which they must fulfil in order to be admitted to the benefit thereof, the undersigned takes the liberty to refer, in order to make them known, to the text itself of the above-mentioned law of August 8 last (Article 1, *a*, *b*, *c*) as well as to the explanations given in the above-mentioned despatch, No. 30, communicated on August 27, 1850.

The proposal, with the relevant papers, was referred to the Secretary of the Treasury, Thomas Corwin, who thus commented in his letter to Webster of December 23, 1850 (D.S., Miscellaneous Letters, December 1850):

I have the honor to acknowledge the receipt of your letter of the 18th inst referring to this Department the communications to the Department of State, under dates of the 15th [*13th*] September last and 5th inst, from Mr Testa the Charge d'Affaires of the Netherlands relative to the recent modification in the navigation laws of that Kingdom

By existing treaties [2] the vessels of the United States and Holland engaged in the direct trade between the two nations are placed upon a footing of equality, as is also the merchandise they may convey, so far as the latter is the produce or manufacture of the two countries respectively; and the Government of the Netherlands by the recent change in its navigation laws, now proposes to the United States in common with all commercial nations, to throw open the whole foreign commerce of the two countries, to the vessels of each on a footing of mutual equality.

As the United States more than twenty years since by their act of 24th May 1828 [3] made a similar offer to all foreign nations, and have carried the principle into effect with Great Britain, under the recent change in her navigation laws, I presume there will be no hesitation in closing with the present proposition from Holland. Before doing this, however, I think there are several points which should be fully understood, and properly explained, as they do not appear to be clearly expressed either in the communications from Mr Testa, or the despatch to him from the Dutch Minister of Foreign Affairs, a copy of which accompanies his own note.

The first and most important of the points which thus require explanation, is as to the trade with the Dutch Colonies. This is a valuable branch of commerce, particularly, with the important colony of Java, and will undoubtedly become much more so, to our flag, under the proposed arrangement. The despatch to Mr Testa from his Government says "It is only in relation to the intercourse between Dutch European ports, and the ports of Dutch Colonies, as well [as] in regard to colonial navigation in general, that it has been deemed expedient to make any reservation in the new law", and then proceeds to state that this reservation can be removed by the nations who will grant a reciprocity to Dutch vessels, alluding of course (though not expressly so stated) to the *Colonial* trade

[1] Quoted above.

[2] The use of the plural here indicates that the Secretary of the Treasury had in mind not only the treaty of January 19, 1839 (Document 87), but also the Treaty of Amity and Commerce of October 8, 1782 (Document 5). In 1846 the attitudes of both Governments had been that the treaty of 1782 was in force (see Westermann, The Netherlands and the United States, 390).

[3] Quoted above.

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of such nations; but as the United States have no Colonies, they would be unable to grant any such reciprocation. In a subsequent Portion of the same despatch the subject is again adverted to, but not in language sufficiently clear to place it beyond doubt as to the privileges which the United States would be entitled to enjoy in the Dutch colonial trade. In any arrangement therefore which may be made, I consider it should be clearly understood, that American vessels should have the privilege of trading to and from the Dutch Colonies,—between them and the mother Country, as well as between them and the United States or other Countries on a perfect footing of equality in every respect with Dutch vessels.

The Dutch have various establishments to the East of the Cape of Goodhope, which are called settlements or factories, particularly on the Islands of Sumatra and Banca,[1] at which a large commerce exists. These establishments are not ranked as Colonies, and some of them were, and probably still are dependencies and under the control of the Colonial Government of Java. Care should therefore, be taken that all such establishments be expressly included in the arrangement.

Under the convention [2] of 31st March 1831 with the Powers bordering on the Rhine, the Dutch Government is authorised to impose a transit duty on goods passing through its territory, destined for the interior of the Continent. It proposes under the present arrangement to suspend all such transit duty "at least for the present". This should be a permanent relinquishment, or at any rate, it should not be restored upon goods brought to Dutch ports by American vessels, which would be exempt when brought by Dutch vessels.

The present proposed arrangement from Holland, excludes the Coasting trade and Fisheries, to which exclusion of course, there is no objection on the part of the United States

The new law, which allows foreign vessels owned by Dutch subjects to obtain Dutch Registers, and consequently the privileges of Dutch built vessels, appears to give this, gratuitously without asking reciprocity for Dutch vessels. Were this otherwise, & reciprocity should be asked I think it would not be advisable to accede to any proposition of this kind, for though, probably we could do it with impunity, if not with advantage with Holland, it would afford a precedent for similar claims from other Nations, and particularly from Great Britain, who would overflood us with her cheap built Canadian and Nova Scotia vessels.

The preceding embraces all the items to which I think it necessary to refer, in connection with the subject of your communication.

The papers transmitted from your Department are returned herewith.

The "footing of mutual equality" was now acceptable to both Governments, at least in principle; but there was an obstacle to the methods of procedure then under consideration, namely, a proclamation by the President under the act of May 24, 1828, and a royal decree under the Netherland laws (so far as those laws required such action); the nature of the difficulty had been plainly indicated in the communication of August 27, 1850 (printed above), of the Netherland Minister of Foreign Affairs (paragraphs 28 and 29, beginning "Finally"), but it seems not at this moment of the discussions to have been understood at Washington.

The Netherland law A (Article 1, *a* and *c*) required, as a condition precedent to decree regarding the colonial trade, not only equality of treatment of ships and cargoes, but also absence of differential duties on produce of or exports from the colonies of the Netherlands. The President was authorized by the act of May 24, 1828, to grant equality of treatment; but he was not thereby or otherwise authorized to do away with the then existing 20 percent differential duties of the United States on tea and coffee. Assuming equality of treatment

[1] Bangka or Banka.
[2] Cited above.

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granted, those duties were, of course, not differential as to flags; but they were differential as to direct or indirect shipment. Java coffee, for example, might (and doubtless mostly did) enter the United States free of duty; but in some cases, and then whether carried under the American or Netherland flag, it would be subject to the duty. This being so, a decree under the Netherland law could not issue; and since no change of statutory enactments of either country was feasible, the only way out was one not as yet mentioned, namely, the making of a convention.

After consideration at The Hague of the letter of the Secretary of the Treasury of December 23, 1850, the responding views of the Government of the Netherlands were communicated in the following note of Testa of March 14, 1851; and therein, also, the difficulty arising from the differential duties of the United States on tea and coffee was described and the suggestion of abolition thereof was made (D.S., 3 Notes from the Netherland Legation, translation from the French):

I have had the honor of receiving and of transmitting to my Government the official communication which you were good enough to address to me on the 30th of December last, as well as the letter which accompanied it from the Secretary of the Treasury, dated the 23d of the same month, presenting his considerations on the communication and note from this Legation to the Department of State, dated respectively September 13 and December 5, 1850, relative to the modifications made in the navigation laws in the Netherlands and the reciprocity which it would be a question of recognizing to the latter in the United States.

While displaying a general disposition to accept such reciprocity, the letter from the Secretary of the Treasury takes the position that, first of all, some further clarifications ought to be requested with respect to various purposes and points which are affected by the new regime of commerce and navigation put into force or to be put into force by the Netherlands.

The first of these points, and perhaps the principal one, is that concerning the commerce of the colonies. The Secretary of the Treasury desires on this subject to have specified clearly, leaving no room for doubt, the advantages which the new system introduced therein by the Netherlands would assure for the United States if it should be called to participate therein. I am happy to be in the position, in this regard, because of the new instructions which I have received, to give some explanations, clear and precise, which answer the desire of the Secretary of the Treasury.

The flags which, by virtue of Article 6 of the law of August 8, 1850, are by royal decree admitted in the colonies and possessions of the Kingdom in other parts of the world on the same footing as the Netherland [1] flag—which are assimilated to it—are so admitted in all respects with the exception of cabotage, that is to say, that, with the exception of that commerce, from which foreign nations are excluded, navigation dues as well as entry and clearance dues are, for the ship itself as well as for the cargo, the same for the assimilated vessels as for Netherland vessels.

The letter from the Secretary of the Treasury desires, then, that the treatment of equality admitted for the colonies in general should be admitted likewise, expressly, for what it calls the other Netherland establishments and factories east of the Cape of Good Hope. The principle governing the subject in the new legislation adopted by the Netherlands is entirely adapted to answer the desire of the Secretary of the Treasury in this regard. The assimilated flags, being assimilated, as is said above, in every respect, are, therefore, admitted on the same footing as the Netherland flag in all the ports of what are called the external possessions (*Buiten Bezittingen*) which are generally open to foreign commerce. But they are not admitted into the ports exclusively reserved for cabotage, into

[1] Here and elsewhere "hollandais" is rendered "Netherland".

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which the vessels of the Netherlands itself are not admitted except so far as they carry on such commerce, which ports are not at all open to import and export commerce with foreign countries, whether such commerce be carried on by nationals or others. It is understood that navigation between the different islands of the East Indian Archipelago is considered cabotage.

A third point which offers doubts and gives the Secretary of the Treasury occasion for recommendations is that concerning the suspension of what the letter calls transit dues on the Rhine. The Secretary of the Treasury would desire that such suspension, instead of being provisional, as is said in the despatch of clarification from His Excellency the Minister of Foreign Affairs of the Netherlands under date of August 27, 1850—a copy of which accompanied my above-mentioned note of the 13th of September following—should be permanent. I take the liberty of observing that there is a well-marked and essential distinction between the dues called transit dues established by the customs tariff of the Netherlands and the double due known as the navigation and recognition due (*droit de reconnaissance*) collected on the Rhine because of the Convention of Mainz [1] of March 31, 1831. The dues on transit through Netherland territory collected hitherto, at, it is true, an almost nominal rate, by virtue of the customs tariff of June 19, 1845, have just been entirely eliminated by the most recent modifications and in a manner as permanent as all other legislative provisions in the Netherlands. But as to the Rhine dues, it is necessary to observe that by the very nature of things and by virtue of the very stipulations of the Convention of Mainz they remain absolutely outside the subject of customs. Basing itself on that, the Government of the Netherlands would have the right to refuse to enter upon *pourparlers* as regards those dues on the occasion of the discussion of a treatment of commercial reciprocity like the one which it is a question of establishing between the two countries. And in point of fact it is only the initiative which the Government of the Netherlands took in suspending those dues and in so announcing which leads the Government of the United States to insist, with regard to those dues, on a point which it would not otherwise have touched upon in a negotiation such as the present one. It is not at all desired at The Hague to take refuge on this occasion behind those considerations; it is desired only to recall them in order to forestall the use which might be made of the explanations which are given below, as a precedent.

For a long time past the Government of the Netherlands has been urging on the co-riverain states of the Rhine the total and definitive elimination of the Rhine dues. Until now it has not been possible to bring all those states to consent to such elimination. The Netherlands, nevertheless, being desirous of seeing as soon as possible the navigation of the Rhine free from all obstacles, has thought that it ought not to wait longer for the arrangement with the co-riverain states and that it would do well to lead the way. That is what it has done by the present elimination. But, in view of the complications to which the future might, contrary to all hope, give rise with the co-riverain states, it is understandable that the elimination could have for the present only a provisional character. The Netherlands desires to reserve for itself the right to reestablish the Rhine dues for a time as reprisals against the co-riverain states if, unfortunately, circumstances should make it necessary.

It is thought that these explanations will be sufficient to cause the matter to be looked on by the Government of the United States in its true light and to persuade it that in that direction it has no prejudice to fear for its commerce. The possibility of a differential character which might be given to those dues to the prejudice of the commerce of the United States, and which the letter from the Secretary of the Treasury appears to apprehend, does not exist; for, according to the clauses of the Convention of Mainz itself, the navigation of the Rhine cannot be subjected to other dues than those established by that convention, which are invariably uniform for all. It would be unnecessary to add that, as to the transit dues in general, exemption therefrom, when once granted, is one of those measures which are not easily reconsidered in these times.

I now come to the point concerning the nationalization in Holland of vessels built abroad. Reciprocity is not at all asked as regards that subject.

[1] Cited above.

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But, in the supposition that the clarifications above answer the expectation of the Government of the United States and dispose it to enter into the system proposed by the Netherlands, there is a difficulty which presents itself, to which the new instructions from my Government ask me to invite the attention of the Government of the United States. It concerns two provisions of the United States tariff, which, as long as they are maintained, derogate from the conditions the accomplishment of which is asked of foreign nations by the law of August 8, 1850, if they desire to be admitted, in colonial commerce, to the flag assimilation which is in question. This law, in section *c* of Article 1, requires not only that the foreign nation desiring the assimilation should levy no differential duties to the prejudice of products of the Netherland colonies imported directly from the place of production or indirectly from the ports of the Netherlands in Europe, but, furthermore, that such nation should levy no differential duty in general on any products of Asia, Africa, America, or Australia which are imported from the ports of the Netherlands in Europe. Now, on the articles *coffee* and *tea* the tariff of the United States imposes, precisely, differential duties such as those from which it is the purpose of the said section of the law of August 8 to exempt Netherland commerce. That is, under the United States tariff, coffees other than those produced in the Netherland overseas possessions, and teas, if they come from the ports of the Netherlands in Europe, are subjected to the payment of a differential duty of 20 percent. It is unnecessary to say more on the subject in order to make it clear that those provisions are in direct opposition to the conditions laid down by the new Netherland law for the assimilation in question. I am charged by my Government to sound the Government of the United States on its disposition to include, if the case should arise, the abolition of the said differential duties on coffees and teas in the abolition of the other differential duties which, by virtue of the existing tariffs, burden the indirect and colonial commerce of the Netherlands in the United States. It seems unnecessary to add that until then it will be difficult for the Government of the Netherlands to come to an understanding with that of the United States on the method to be followed to carry out and put into practice the system of reciprocity which is contemplated and which, for that matter, is so desirable for the commerce of the two nations. I shall have the honor to await, as regards this point of difficulty, the communications which the Secretary of State will see fit to send me.

Again there was reference to the Treasury; and the further views of that Department were set forth in a letter of the Acting Secretary of the Treasury, Assistant Secretary William L. Hodge, of March 29, 1851; therein, as will be seen from the following text, the explanations of the Netherland Government were deemed satisfactory; the point regarding the discriminating duties of the United States on tea and coffee was not fully grasped; and there was raised a new point as to the Java coffee trade (D.S., Miscellaneous Letters, March 1851):

I have the honor to acknowledge receipt of your letter of 28th inst with the accompanying copy of a communication from Mr Testa the Charge d'Affaires of the Netherlands respecting a proposed arrangement for a free reciprocity in all the trade of the two countries under their respective flags

The Department has given a full and very careful examination to the letter of Mr Testa and considers that his declaration is both explicit and satisfactory as regards the terms of the Royal decree under the 6th article of the law of August 1850 by which foreign vessels are put upon a full footing of equality with the Dutch flag in every respect, both as regards the Mother Country and her colonies, except as to the Coasting trade, the privileges of which latter, it of course is understood in like manner cannot be conceded by the United States to the Dutch flag. That the above equality applies equally to vessels and their cargoes, as to tonnage port charges, light money and import and export duties, and also extends not only to the regular colonies of Holland, but also to her isolated settlements and factories Eastward of the Cape of Good Hope with the exception only, of such ports in that quarter where only a coasting trade is allowed, and where even Dutch vessels are prohibited from carrying on any import or export foreign commerce.

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It should however be understood that at such ports the only allowed trade to the Dutch flag is bona fide a Coasting trade, and that where Dutch vessels are allowed to trade to and from Holland, that privilege should also be considered as belonging to the American flag.

As regards the suspension of the transit duties on goods passing through Holland from the states bordering on the Rhine, Mr Testa seems to have misunderstood the views of this Department as expressed in its letter of 23^d^ December last to the Department of State. These duties have been temporarily suspended by Holland, and from the tenor of Mr Testa's present letter, he appears to think that the Department was desirous of stipulating that this suspension should be made permanent. Such however was not the intention of the Department, for the United States could not more consistently ask for a permanent, or even a temporary suspension of such transit duties, than they could for a like suspension of the regular duties on imports into Holland by Sea. A large and valuable commerce is carried on in foreign productions between Holland and the interior German territories, either by direct purchases in Holland or by the transit from her seaports to the countries bordering on the Rhine, and all that the United States can ask or expect is that the duties on such foreign productions whether of importation or of transit should be the same when those productions are imported into Holland by American Vessels, as when they are introduced under the Dutch flag. The reason for this, is very obvious, for if the productions of foreign Countries intended for the consumption of the interior of the continent, were subject even to a slight transit duty on passing through the Territory of Holland when imported by American Vessels, which was not assessed on similar productions when brought in Dutch vessels, it is evident that American ships would labor under such a disadvantage as entirely to exclude them from all participation in this large and valuable commerce. The United States, therefore, would have no just cause of complaint were Holland to reestablish these transit duties, provided she levied them also upon her own vessels, and that American Vessels should be placed upon a full footing of equality with the Dutch flag in this respect, is all the Government of the United States can reasonably expect.

As to the discriminating duties to which Mr Testa alludes, as regards Coffee and Tea when imported into the United States *indirectly* from the places of their production, and the claim that no discriminating duties shall be imposed on any productions of Asia Africa, America or Australia imported in Dutch vessels from Dutch or other ports, I would observe that if the proposed arrangement is carried into effect by the two Governments, the Dutch flag would in those respects be placed upon the same footing as the American, and no other, or higher rate of discriminating duties would be paid upon such indirect importations when made in the vessels of the Netherlands than when brought in vessels of the United States. But it cannot be expected, that if from motives of commercial policy the United States now or hereafter should desire to levy discriminating duties upon foreign productions when imported from other countries than those of their production, they should not be at liberty to do so, if such discriminating duties are equally levied on such productions when brought in American vessels as when imported in those of other Countries with which the United States may have reciprocal commercial arrangements such as that now contemplated with the Netherlands

The case is perfectly analagous to that of the transit duties through Holland already alluded to, in this communication, in which the United States do not ask or expect that such duties shall be suspended, but leaving Holland at full liberty to levy them in any mode, or to any extent which her interest may dictate, but only stipulating that they shall be exacted in the same form and to the same amount on Dutch as on American vessels

The Department having thus given its views on all the points embraced in the communication of Mr Testa would now respectfully submit the following additional point for the consideration of the Department of State.

The only Colony of Holland situated to the Eastward of the Cape of Good Hope with which the American flag has any considerable trade is Java, and the principal item of commerce in that Island is Coffee.

At present and for a long period back an export duty is levied upon this article of 8 per cent. which at the present cost of the article is about one cent per pound

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being equal to a fair freight of it from Batavia or Samarang [*Semarang*] the two great shipping ports of the Island to Europe or the United States. It is true that this duty is equally exacted upon shipments by Dutch, as by American Vessels, and thus apparently forms no subject for just complaint, but the practical result is nevertheless highly detrimental to the foreign flags engaged in the trade, as seven eighths of the Coffee shipped from the Island belongs to the Government of Holland and is shipped for its account.

It is thus very evident that this duty on Coffee shipped in Dutch Vessels is nominal, being only taken from one pocket to be placed in another, whereas it is a sad reality in its operation upon the shipments made in American vessels. In a personal interview with Mr Testa this subject was brought to his attention, and he stated in reply that these shipments were made by the Dutch East India Company, and that the duty was paid by it. This is true, but the Company is only the carrier and factor of the Government, in the business, and though it advances the amount of the duty by paying it into the Colonial Treasury, for local expenditure, it reimburses itself together with its other charges for freight insurance factorage &c from the proceeds of the sales in Holland, the net amount of which is paid into the Dutch Treasury

The Department is at a loss to suggest any remidy as regards the question, as on the face of it there is nothing inconsistent with the system of reciprocity between the two flags, and there is an obvious difficulty in going behind the apparent facts of the case and contending against the practical results. It is however very certain under such a system the whole advantages of the reciprocal arrangement for an equality between the two flags may be entirely abrogated as regards American vessels so far as concerns the trade of the Island, for the present duty of 8% may with equal propriety be increased to 20 or 50 per cent, and thus effectually exclude all flags except the Dutch from any participation in the export trade of the Colony.

On June 17, 1851, the views of the Treasury were communicated to Testa with a note which invited particular attention "to the remarks of Mr. Hodge upon the unequal bearing which, it is apprehended, the reciprocity proposed to this Government would have upon the trade with Java in vessels of this country, in comparison with those of Holland, under the existing relations between that Colony and the mother country" (D.S., 6 Notes to the Netherland Legation, 70). The Government of the Netherlands answered at length, after study of the Treasury letter; in that answer, which was by note of Testa of November 5, 1851 (following), was first proposed a treaty or convention; all the previous discussions had been of proclamation here and decree at The Hague (D.S., 3 Notes from the Netherland Legation, revised translation from the French):

I have had the honor to receive and to transmit to The Hague the official communication which you were good enough to address to me on the 17th of June last, as well as the letter from the Secretary of the Treasury ad interim, dated March 29 last, which accompanied it.

In reply to the contents of this latter I am happy to be in position, in the first place, to express the satisfaction which my Government feels at seeing that the clarifications which it has furnished to the Government of the United States with respect to the new navigation laws adopted by the Netherlands have dissipated, for the most part, the doubts which have hitherto prevented the United States from granting in its ports the just reciprocity which the Netherlands requests.

As regards the few points concerning which further clarifications are requested and the few objections which are still made, I hasten, in pursuance of the new instructions which I have received, to give here assurances and explanations which I flatter myself will reassure the United States regarding the real advan-

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tages proposed to it, will cause to cease any hesitation on its part, and will definitively bring the two Governments together.

And, in the first place, as regards cabotage in the Netherlands Indies, which the Government of the Netherlands reserves, and concerning which the letter from the Treasury requests a declaration that the commerce permitted under this name to the Netherland flag is no more than *bona fide* coasting trade, I can repeat and confirm all that I have already had the honor to say on this subject in my note of March 14 last.[1] I add in the most explicit way that wherever it is permissible for national vessels to import and to export from and to Holland, the same right will be accorded to American vessels; and there are excepted only the points which are open only to cabotage and where neither European vessels of the Netherlands nor even Indian vessels of the Netherlands can take or bring cargo to and from places situated outside of the domain of the Netherlands Indies.

I shall not take up again what the letter from the Treasury contains with respect to the Rhine dues. It follows from the explanations given on both sides that the two Governments are proceeding in harmony. In the Netherlands the tendency is to eliminate those dues permanently; there can, therefore, be no question of applying them with a differential to American imports; those dues, before the present suspension, have always been equally applied to all imports; the system now adopted by the Netherlands is to favor transit through its streams and over its territory; for this purpose the new legislation has eliminated all transit dues. The possible and unexpected reestablishment of the Rhine dues as a measure of retorsion against the riparian states would no more give rise than it did in the past to their application with a differential on American imports.

As to the objection which was made to the request of the Government of the Netherlands to include in the differential duties to be eliminated in the United States those on *coffee* and *tea*, which the present tariff of the United States collects in cases when those articles are imported from other places than those where they are produced, I am directed to state that my Government, without entirely sharing the views of the Government of the United States in this respect, is nevertheless disposed to accept in regard thereto the provisions of the present tariff of the United States. That is to say, that while not discussing the power of the United States to tax those articles with a differential because of the place from which they come, it claims the privilege that Netherland vessels should be able to import them into the United States, in any case, on the same footing as vessels of the United States. But, although disposed to accept that regime, my Government points out that, as regards itself, the law of August 8, 1850, ties its hands; that under the terms of that law the King cannot grant by a simple *decree* the perfect assimilation of treatment for the flag except to states which renounce the collection in their countries of any kind of differential duties. In order, therefore, to arrive, in regard to this point, at a *rapprochement*, the cooperation in the Netherlands of the States-General is necessary. The means of bringing the matter before the Chambers in a regular way would be to include it in a treaty or a convention, to be signed by both parties, and which, in the Netherlands, would be submitted to the approval of the States-General, just as it would be submitted to the Senate in the United States. The Government of the Netherlands proposes, should the case arise, this manner of escaping from the difficulty.

I now take up the point to which, Mr. Secretary of State, your official communication of June 17 last invited my special attention; that is to say, the unequal manner in which, according to the understanding of the Government of the United States, the proposed reciprocity would be applied to the Java trade in American ships in comparison with the commerce of Netherland vessels under the relations existing between the colony and the mother country.

Before going further, I take the liberty of observing that it is doubtless by mistake that in the letter from the Treasury the export duty of coffee in Java is set at 8 percent; it is, according to the tariff in force, a duty of 12 percent and of one half, or 6 percent, when the coffee is exported to Holland in Netherland vessels. The reciprocity offer would likewise give to vessels of the United

[1] Quoted above.

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States the advantage of exporting Java coffee to Holland while paying an export tax of only 6 percent, an advantage which they do not enjoy at present.

The objection raised by the Secretary of the Treasury ad interim is that, as the great bulk of the coffee exported is a Government product and as it is exported by the Commercial Company (*Société de Commerce*), its agent, which charges to the account of the Government the duties paid on export, it follows that that coffee, in effect, does not pay duties, because, in point of fact, the Government receives with one hand the duties which it pays with the other hand.

Without pausing to inquire whether the payment of the export duty by the Commercial Company, although carried to the account of the Government, does not, nevertheless, constitute a burdensome condition for the Company, the first remark to be made here is that all coffees in the colonies are far from belonging to the Government and from passing for purposes of export and sale through the hands of the Commercial Company; the industry of private citizens has furnished considerable quantities of this product during recent times, and it is hoped that this will increase; and these coffees which are produced by private individuals are exported in both foreign and Netherland vessels. Now, the exportation of all these coffees shares in the disadvantage, if there really is one, which the letter of the Secretary of the Treasury ad interim points out as burdening American commerce. Now, if this disadvantage is common to all those coffees, if it is common to all persons who export those coffees, it is, therefore, a burden also on Netherland commerce and on Netherland vessels employed in such export trade. Now, it seems to the Government of the Netherlands that from the moment that it grants to foreign trade the same treatment as it grants to its own subjects, it is going to the most extreme limits of what it can concede and is conceding all that the foreigner can reasonably require.

But this is not all: This disadvantage is more apparent than real; for, as the letter from the Secretary of the Treasury ad interim suggests very truly, the difference in the duty in question is not such as to discourage the production and the exportation by private individuals in Java to the profit of that carried on by the Government. On the contrary, coffees produced by private industry are constantly appearing on the markets, even of Holland, side by side with Government coffees, and compete with the latter. The disadvantage, therefore, if there is one, is not in the difference of the duty paid, but in the smaller amount of coffee, taken by itself, which remains for export outside the Commercial Company. Now, this question no longer belongs to the field of tariffs and navigation laws.

But in order to render the matter still more obvious and to indicate that the advantage which is believed to belong to the commerce of the Company is not due to the flag, one needs only to assume, for a moment, that the Commercial Company employs foreign vessels also for exporting its coffees; it will none the less, because of that fact, pay and take into account the export duties, a circumstance which shows clearly enough that those duties do not concern the flag at all, that they are independent of it. It is true that the Commercial Company employs by preference national vessels; but in so doing it is only using the common right which any agent or any broker has, of choosing his means of transportation; and we cannot see how that could furnish any basis of complaint on the part of the foreigner.

It follows that an increase or a diminution, or even a total elimination, of the export duties would change nothing in the essential circumstance, as in the last analysis everything depends on the choice of vessels which the General Company (*Société Générale*) makes, a choice the right to which cannot be denied to it any more than to any other private commercial company.

If the Government gives, in the exportation and the sale of its coffees, the preference to the Commercial Company, it is only using the right which every individual has to dispose as he sees fit of what belongs to him. Considering the matter from this point of view, it would be necessary, in order to clear away at one stroke the objection of the Secretary of the Treasury ad interim, to bring it about that the Government should not be the great coffee owner in Java. Now, it is a matter of public knowledge that it is such only by the force of circumstances, because of the culture system which has been introduced on lands belonging to the State, a system to which is due the great extension of coffee culture

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in Java and therefore all the present prosperity of the colony. It is easy to judge from this that with the best will the Government could not deviate from it.

What I have had the honor to say up to this point is already an indirect answer to the hypothesis expressed by the Secretary of the Treasury ad interim that if the rate of the export duty should be carried some day up to 20 or 50 percent by the Netherland Government, all the advantages of the reciprocal arrangement for the assimilation of the flags might thus be canceled as regards the share of American vessels in the commerce of the island.

Without doubt, in such case, which is not to be expected, commerce outside of the General Company would become almost an impossibility, assuming, of course, that the export duty would be 50 percent but that it would be 6 percent, as it is at present, for exports to the mother country in Netherland vessels. But this hypothesis cannot be admitted; for the treaties [1] of the Netherlands with England, if not considerations of policy, make it necessary for it never to carry the differential duty in the colonies, to the disadvantage of English commerce, beyond double the duty paid by nationals. The nations treated by the Netherlands on the most-favored-nation basis in the colonies, among which nations the United States has always been placed, participate in the effect of this clause which binds the Netherlands to England.

But if the hypothesis of the Secretary of the Treasury implies that the duty on exportation, raised to 20 or 50 percent, is at the same time raised to 10 or 25 percent on exportation under the Netherland flag to the mother country, then there is nothing to be changed in what I have had the honor of stating above; treatment for the two flags remains the same, as well as the proportion in which each of the flags takes part in the exportation of coffee.

These developments, into which it has been thought best to enter in order to clarify and set forth the question in detail, give rise to the hope that the Government of the United States will not stop at this point and refuse the regime of reciprocity which the Netherlands desires to see established. In fact, under the arrangement proposed it is almost unnecessary to recall that the advantages for the two parties are quite equally distributed. The Netherlands opens its indirect commerce in Europe to the American flag on the footing of the national flag (an advantage which the United States has fully enjoyed for more than a year past gratuitously and by the spontaneous act of the Government of the Netherlands); the Netherlands places American commerce on the same footing as its own, not only in its East Indian Colonies, but also in its West Indian Colonies at Surinam, where American commerce is undoubtedly of some importance. In return it receives national treatment for its indirect commerce in the United States, a market which is doubtless very large, as the Secretary of the Treasury ad interim pointed out in a private conversation, but a market in which Holland will share only in proportion to her limited means and where she will have to struggle with a competition which is seldom in her favor, as the statistical tables of the direct commercial movement between the two countries already indicate only too clearly. Furthermore, the great extension which the United States gives to its coastwise commerce by including therein the commerce of the ports of the Union on the Atlantic with the ports of the Union on the Pacific, still further limits to a considerable degree that market. The Government of the United States, so enlightened on all occasions, cannot fail, of itself, to give weight to all these considerations.

If, as it is thought we can flatter ourselves, the Government of the United States, after taking note of all these clarifications, is disposed to accede to the proposals of the Netherlands, I have the honor to declare that I am ready, in pursuance of the instructions which I have received, to enter upon the subsequent work of concerting a treaty or convention with the Government of the United States. The regulation of the matter by means of a convention is desirable, even if only for the reason set forth above regarding the differential import duty on *coffee* and *tea* in the United States; as regards this point it is even necessary. As this convention, like any commercial treaty, must be temporary and subject to

[1] The particular reference is to Article 2 of the treaty of March 17, 1824 (text in 11 British and Foreign State Papers, 194–213). Later conventions are those of October 27, 1837, and March 27, 1851 (texts respectively in 26 *ibid.*, 273–82, and 40 *ibid.*, 41–45).

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denunciation, the Government of the United States will, therefore, perhaps, have less hesitation in being a party to it.

In response to an inquiry of Webster, Testa wrote on December 12, 1851, that under the law of August 8, 1850, a single duty of 20 florins a hundred kilograms (say 3.7 cents a pound) was levied on tea of any quality imported into Holland, under any flag and from any source; and that by the same law the tare for tea was of 18 or 25 percent, according to the capacity of the tea chests, but without distinction of flag [1] (D.S., 3 Notes from the Netherland Legation).

From this stage the discussions were on the wording of a convention. The first draft was that of Testa of December 19, 1851 (*ibid.*); this was in English and comprised a preamble (not unlike that of the convention) and six articles; the first three of these are almost word for word the same as the English version of the corresponding articles of the final text; Article 4 of the draft similarly corresponds to the first of the two sentences of Article 4 of the convention; Articles 5 and 6 read thus:

ART. 5.

The above reciprocal equality in relation to the flags of the two countries is not understood to include the differential duties levied on the goods by the Netherlands in their colonies and dominions beyond the seas, in favor of the intercourse between the said colonies and dominnions and the mother country, and which the Netherlands shall continue to levy therein on the goods without discriminating whether imported or exported in vessels of the Netherlands or in vessels of the United States. Likewise, the United States shall continue to levy the differential duties imposed by the present tariff on *teas* and *coffee*, in favor of the direct importation of these articles from the place of their growth, but, also, without discriminating between the flags of the two countries. And if, at any time, the Netherlands or the U. States shall abolish the said differential duties, it is understood that the same shall be in like manner abolished in relation of the commerce of the other country. The privilege granted to the Netherlands by the present tariff act of the U. States, as to the coffee the growth or production of the possessions of the Netherlands, imported from the Netherlands, is continued.

ART. 6.

The present convention shall be considered as additionnal to the above menntioned Treaty of the 19th January 1839, and shall have the same duration as that Treaty.

Consideration of the project of Testa by the State and Treasury Departments resulted in a counterdraft; while this is not textually available, it seems to have differed from the Netherland draft only (*a*) in the omission of the final sentence of Article 5 thereof and (*b*) in a revised Article 6 reading about as does that article of the convention except for two phrases later inserted at the suggestion of Testa; for the primary duration of the convention it appears that the Department of State first wrote five years, which was changed to two at the suggestion of the Treasury.

[1] In his note Testa speaks of the tare as being *additional* to the duty (*en sus du susdit droit*); but this appears to be a mistake resulting from a misapprehension of the nature of tare, combined with a misreading of the enactment (see page 13 of law No. 47, in Staatsblad van het Koningrijk der Nederlanden, 1850).

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The American counterdraft was sent to Testa on January 15, 1852 (D.S., 6 Notes to the Netherland Legation, 73), with a copy of this letter of the Treasury (signed by Hodge) of January 12 (D.S., Miscellaneous Letters, January 1852):

I have carefully examined the counter draft prepared in the Department of State as a supplementary commercial convention between the U. States & Holland and compared it with the original draft presented by Mr. Testa the Chargé d'Affaires of the Netherlands and consider that the provisions of the counter draft are such as should be satisfactory to both the contracting parties.

The provision in the draft presented by Mr. Testa that the Coffee of the Dutch Colonies should continue to be admitted free of duty when imported from the Netherlands has I think been very properly omitted in the counter draft which you propose submitting to the Dutch Government.

A heavy differential export duty upon Coffee is levied when shipped from Java to foreign Countries above that exacted on the article when shipped to Holland and it would certainly not be good policy for the U. States to enter into any stipulations which would prevent them from withdrawing the present exemption from duty upon Java Coffee imported from Holland in case the Government of the Netherlands should continue the present additional export duty upon it when shipped from that Island direct to the U. States to say nothing of the fact that such a stipulation would prevent the U. States from levying *any* duty upon Coffee the production of the Dutch Colonies even if Congress thought proper to change its present policy of admitting that article free and levying a general duty upon it, without regard to its place of import or production.

This additional export duty upon Coffee shipped from Java to foreign Countries operates of course very injuriously to the direct trade between that Island and the U. States, but I am pleased to understand that the Dutch Government has it in consideration to make an equitable charge [*change?*] in this respect.

I would, however, respectfully suggest the propriety of informing the Minister of the Netherlands that unless the flag of the U. States is, within a reasonable time, put on an equality in this respect, that a recommendation will be submitted to Congress to withdraw the present privilege of free entry in the U.S. to Java Coffee imported from Holland.

This privilege is exclusively granted by our present tariff to Coffee the production of the possessions of the Netherlands as all other Coffee is subject to a duty of Twenty per cent when not imported direct from the place of its production and it is neither reasonable nor just that whilst other Nations possessing Coffee colonies who allow its exportation in American vessels on terms of perfect equality with their own are denied this right of free indirect importation it should be continued to the Coffee grown in Dutch Colonies where an oppressive distinction is made against American vessels which may bring it from those colonies direct to the U. States.

The only other suggestion I would make as regards the counter draft would be to allow either party to abrogate it after the expiration of Two years upon giving at least Twelve months previous notice. It is, of course, not important that this change should be made particularly if any reason exists in favor of the proposed period of five years.

The American counterproject was accepted by the Netherland Government; Testa received his full power and wrote as follows to Webster on April 13, 1852, suggesting merely some drafting changes (D.S., 3 Notes from the Netherland Legation, revised translation from the French):

I have had the honor to receive in due time, and to transmit to The Hague, the official communication you did me the honor to send me under date of January 15 last as well as the counterdraft of convention and the letter from the Secretary of the Treasury ad interim which accompanied it.

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I have the satisfaction of being able to inform you here, in reply, that the said counterdraft has not encountered any material difficulties on the part of my Government and that, consequently, I have been given the necessary full powers to sign it as a definitive convention between the two countries.

The only desire that the Government of the Netherlands has to express, and which, according to the terms of the letter from the Secretary of the Treasury ad interim, it flatters itself will be received favorably, is that the convention, instead of being concluded at first only for *two* years, be concluded for *five*, as the Department of State proposed in the first place.

There are still two other secondary additions which the Government of the Netherlands believes necessary in Article 6 and against which the Government of the United States doubtless cannot make any objections: that is, to add after the words [1] "and shall be in force", at the beginning of this article, these words: "altogether with the unmodified articles of that Treaty"; and toward the end of the article, after the words "and all the provisions thereof", these words: "as well as the said Treaty [2] of the 19th of January 1839 and the provisions thereof". With these changes the tenor of Article 6 would be as follows:

> "The present convention shall be considered as additional to the above "mentioned treaty of the 19th of January 1839, and shall be, altogether with "the unmodified articles of that treaty, in force for the term of years, "commencing six weeks after the exchange of the ratifications; and further "until the end of twelve months after either of the contracting parties shall "have given to the other notice of its intention to terminate the same: each "of the contracting parties reserving to itself the right of giving such notice "to the other after the expiration of the said term of years. And "it is hereby mutually agreed that, in case of such notice, this convention "and all the provisions thereof, as well as the said treaty of the 19th of "January 1839 and the provisions thereof, shall at the end of the said twelve "months altogether cease and determine."

The purpose of these additions is to link the duration of the unmodified articles of the treaty of January 19, 1839, to the duration of the convention to be signed, and to prevent the anomaly [3] that the said treaty might terminate without carrying with it the termination of the additional convention.

As to what the Secretary of the Treasury ad interim deems fit to remark and declare in his above-mentioned letter, concerning the duties collected in Java on coffee, upon exportation, in favor of the intercourse with the home country, and concerning the exemption from duties which is enjoyed by Java coffee, coming from Holland, on its entry into the United States, under the tariff in force, I can confirm here what I had the honor to tell the Secretary of the Treasury ad interim in our conversations, that the modification of the tariffs of the Indies has, in recent times, become a subject of serious consideration for the Government of the Netherlands. Nevertheless, however well disposed it may be to give its full attention to the point indicated by Mr. Hodge, it cannot, and the Government of the United States, it is hoped, will so understand, bind itself at this moment by a formal promise to that effect, when the carrying out of that promise would depend in part on the assent of the States-General. But whatever may be, in a more or less near future, the final result reached by the deliberations in the Netherlands in this connection, we hope that the Government of the United States will not lose from sight the fact that the exemption in question which is enjoyed in the United States by Java coffee coming from Holland, was approved in its time less as a gratuitous privilege granted to Holland than as a measure counseled by the general and reciprocal interest of the commerce and navigation between the two countries. Moreover, without entering into a premature discussion of the question, we believe that we can affirm at this point that the United States flag has up to the present obtained a large share of the advantages attached to such exemption.

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[1] The quoted passages following are in English in the original note.

[2] Document 87.

[3] The wording suggested (and used) did not prevent this "anomaly", which in fact occurred in 1918 (see *infra*, under the heading "Duration of the Convention").

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As a period of time to be set for the exchange of the ratifications, when made, on both sides, I have the honor, in accordance with instructions that I have received, of proposing here a period of *four* months.[1]

I have, moreover, the honor to attach here, in accordance with what has constantly been customary between the two Governments, a Netherland translation of the draft convention, with the modifications indicated above, to serve as the Netherland text to be signed together with the English text.

Further modifications, however, were now proposed by the Treasury; Hodge set them forth in this letter to Webster of June 12, 1852 (D.S., Miscellaneous Letters, June 1852), in answer to a letter of June 8 which communicated the note of Testa of April 13 and the project of convention "which he is now prepared to sign" (D.S., 40 Domestic Letters, 177):

I acknowledge receipt of your letter of 8th inst, with a translated copy of a letter from the Chevalier Testa, the Chargé d'Affaires of Holland, accompanying a draft for a proposed Commercial Convention between the U States and Holland, placing the merchant vessels of the two Countries on a footing of perfect equality in their respective ports, as regards not only the direct Commerce between the two nations, but also that with all other countries, and in reply I have the honor to state, that after a careful examination of said draft of a Convention, the Department respectfully recommends that it should be accepted on the part of the U States, with the following modifications, which are more of form than of substance.

1st The 4th article reserves the Coasting trade of both countries to the national flag, including that of the Dutch colonies, but in order to guard against any misunderstanding on the subject, a stipulation should be added, allowing the respective vessels of the two nations to land a portion of their inward cargoes at one port of the other nation, and then to proceed to other port or ports to land the remainder, and likewise to load a portion of the outward Cargo at one port and to proceed to another port or ports to complete the lading, still of course denying the right to load cargo at one port for the purpose of being carried coastwise in order to *be landed* at another port.

The following *addition* is therefore proposed to the said 4th Article viz—

It being however, expressly understood and agreed that nothing in this article shall prevent the vessels of either nation from entering and landing a portion of their inward cargoes at one port of the other nation, and then proceeding to any other port or ports of the same, to enter and land the remainder, nor from preventing them in like manner from loading a portion of their outward Cargoes at one port and proceeding to another port or ports to complete their lading, such landing or lading to be done under the same rules and regulations as the two Governments may respectively establish for their national vessels in like cases.

2nd The Department understands that the 5th article contemplates reserving to Holland the right to place the direct commerce between her and her Colonies on a more favorable footing as regards Import and Export duties, than the Commerce between said Colonies and foreign Countries, but nevertheless to accord to American vessels engaged in that direct trade the same privileges either from reduced duties, or otherwise, as may be enjoyed by vessels under the Dutch flag, but as the present Phraseology of this article might admit of some misunderstanding on the subject, the Department suggests that it [2] should be changed so as to read as follows viz—

Article 5. The above reciprocal equality in relation to the flags of the two Countries, is not understood to prevent the Government of the Netherlands from levying discriminating duties of import or export in favor of the direct trade between Holland and her Colonies and dominions beyond the Seas, but American vessels engaged in such direct Commerce, shall be entitled to all the

[1] Six months was the term fixed; the event showed that four months would not have sufficed.

[2] Meaning the first sentence only of Article 5.

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privileges and immunities whether as regards import or export duties, or otherwise, that are or may be enjoyed by vessels under the Dutch flag.

3d The Department would recommend that the blank for the duration of this Convention, should be filled up with the term of two years, subject to the proposed condition for its further continuance until either party shall give after the expiration of said two years a notice of not less than one year of its wish to terminate it.

The Department notices with pleasure that the Chargé d'Affaires of Holland, holds out the prospect of a modification of the existing export duty on Coffee from Java, which is now so much more when exported either in national or foreign vessels to foreign Countries, than when shipped direct to Holland, and cannot but hope that the same spirit of mutual liberality which governs the provisions of this proposed Convention will induce the Government of the Netherlands to place those duties at an uniform rate, whether the article is shipped direct to Holland or to the United States.

A measure of this kind on the part of the Dutch Government, would remove the only probable inducement for the U States to terminate the operation of the present Convention after the stipulated period, and the Department would respectfully suggest that the above equalization of the export duty on Coffee from Java, should be urged upon the attention of the Government of the Netherlands.

The foregoing letter of Hodge was duly communicated to Testa by Acting Secretary of State William Hunter (D.S., 6 Notes to the Netherland Legation, 75, July 8, 1852); and Testa, having received fresh instructions, wrote from New York that he assented to the modifications asked by the Treasury and would return to Washington for the signing (D.S., 3 Notes from the Netherland Legation, August 13, 1852), which took place on August 26.

Duration of the Convention

In respect of its duration this convention was, by Article 6, in some degree linked with the treaty with the Netherlands of January 19, 1839 (Document 87); "the unmodified articles of that treaty" (Articles 3, 4, and 5; Articles 1 and 2 thereof were superseded) were, with this convention, to be definitely in force for two years, commencing on April 8, 1853 (six weeks after the exchange of ratifications of this convention on February 25); but this convention was thereafter subject to termination on twelve months' notice by either party; and if this convention was so terminated, the treaty of 1839 fell likewise.

But the termination clause (Article 6) of the treaty of 1839 was not otherwise affected; thereby that treaty had been subject to termination on twelve months' notice by either party since July 4, 1849; by this convention (Article 6) there was a period of two years, ending April 8, 1855, for which the treaty of 1839 was continued and during which no notice of termination could be given; but after April 8, 1855, the position was that twelve months' notice might be given by either party of termination of the treaty of 1839, leaving the convention of 1852 unaffected; or such notice might be given by either party in respect of the convention of 1852, terminating the treaty of 1839 also.

Because of the Seamen's Act of March 4, 1915 (38 Statutes at Large, 1164–85), this Government, by notes of May 10, 1918, gave

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notice of termination of the treaty of January 19, 1839, and of the convention of May 23, 1878 (21 *ibid.*, 662–72), each of which accordingly terminated on May 10, 1919 (see Foreign Relations, 1918, 3–5); but both Governments considered that this convention remained unaffected by the termination of the treaty of 1839 (D.S., file 711.5621/20, Netherland note of October 30, 1920, and answering note of November 27, 1920); and this convention of August 26, 1852, is still (January 1, 1941) in force.

The Treaty of October 8, 1782

Neither in the text of the treaty of January 19, 1839 (Document 87), nor in the text of this convention of August 26, 1852, is there any reference to the Treaty of Amity and Commerce of October 8, 1782 (Document 5). During the negotiation of the treaty of 1839 there appears no mention of the treaty of 1782 (see the editorial notes to Document 87 and Hoekstra, Thirty-seven Years of Holland-American Relations, 1803 to 1840, 170–72); and in the relevant correspondence preceding this convention of August 26, 1852, the only allusion to the treaty of 1782 is a rather casual one in the second paragraph of the letter of the Secretary of the Treasury of December 23, 1850, quoted above. The curiously inconsistent and contradictory views expressed from time to time until 1873 regarding the existence or non-existence after 1813 of the treaty of 1782 are learnedly treated in Westermann, The Netherlands and the United States, 82–96, 388–95.

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ECUADOR : FEBRUARY 5, 1853

Convention for the Settlement of the Case of the Brig "Native", signed at Guayaquil February 5, 1853. Original in English and Spanish. Not subject to ratification by the United States. As to ratification by Ecuador, see the editorial notes. Not proclaimed.

The undersigned, to wit, Courtland Cushing Chargé d'Affaires of the United States and Francisco Marcos Plenipotenciary of Ecuador being fully authorized to adjust the payment of the twenty one and a half per cent pertaining to Ecuador in the indemnification claimed for the loss of the N.A. brig "Native" which was seized by the schooner of war "Independence" of the old Republic of Colombia, have agreed to conclude the claim at all points upon the following terms

Los infrascritos, a saber; Francisco Marcos, Plenipotenciario del Ecuador, i Courtland Cushing, Encargado de Negocios de los Estados Unidos, suficientemente autorizados para arreglar el pago de vientiuna i media unidades en ciento, correspondientes al Ecuador, en la indemnizacion reclamada por la perdida del bergantin N.A. "Native" que fue apresado por la goleta de guerra "Independencia" de la Antigua Republica de Colombia, han convenido en concluir de todo punto este reclamo en los terminos siguientes

ARTICLE 1st

The Government of Ecuador will cause to be paid to the order of the Charge d'Affaires of the United States the sum of seven thousand two hundred and four dollars and sixty five cents ($7.204.65/100) in current money, in two equal dividends, one in December of the present year and the other in December of the year 1854, as full and complete indemnification

ARTICULO 1º

El Gobierno del Ecuador mandara pagar a la orden del Señor Encargado de Negocios de los Estados Unidos, la cantidad de siete mil doscientos cuatro pesos sesenta i cinco centavos ($7.204.-65) en moneda corriente, i en dos dividendos iguales, el uno en Diciembre del presente año; i el otro en Diciembre del año siguiente de 1854, por indemnizacion

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for all the losses and damages which the owners or those interested in the N.A. brig "Native" have claimed of Ecuador, by means of the Legation of the U.S. who shall have no right to prosecute any new claim arising out of the seizure of said vessel by the schooner "Independence" of the Colombian Navy

entera i completa de todas las perdidas i perjuicios que han reclamado del Ecuador por conducto de la Legacion de los E.U. los duenos o interesados en el bergantin N.A. "Native", los cuales no tendran derecho para intentar ninguna nueva reclamacion que puede provenir del apresamiento que hizo de dicha buque la Goleta "Independencia" de la armada de Colombia

ARTICLE 2nd

The said sum of seven thousand two hundred and four dollars and sixty five shall bear interest at the rate of six per cent per annum from the 25th day of April 1848, the day on which the Minister of the United States in Bogota and the Secretary of Foreign Relations of New Grenada concluded and signed their Convention [1] in respect to the same claim of Seth Driggs

ARTICULO 2°

La suma prefijada de siete mil doscientos cuatro pesos i sesenta i cinco centavos, devengará el seis porciento anual, principiando desde el 25 de Abril de 1848, dia en que el Ministro de los E.U. en Bogota, i el Secretario de Relaciones Esteriores de la Nueva Grenada concluyeron i firmaron el convenio [1] sobre el mismo reclamo de Seth Driggs.

ARTICLE 3d

The aforesaid interest shall be computed until the 15th of June 1854 and the sum total including both principal and interest, shall be divided into two equal parts one payable on the 15th of December of this present year and the other on the 15th day of December 1854

ARTICULO 3°

Los antedichos intereses se liquidaran hasta el 15. de Junio de 1854; i el total montamiento de ellos, como el principal, se dividáran en dos partes iguales pagables la una el 15. de Diciembre del presente ano; i la otra en igual fecha de 1854

ARTICLE 4th

This Convention shall be presented by the Executive authority

ARTICULO 4°

Este convenio será presentado por el Poder Ejecutivo del Ecua-

[1] Document 131.

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of Ecuador to the next Constitutional Legislature to the end that if it approves thereof, it may appropriate the necessary sum for its exact execution.

In testimony whereof the undersigned have signed two of one tenor, in Guayaquil the 5th of February one thousand eight hundred and fifty three

(Signed) COURTLAND CUSHING
F. MARCOS

dor a la proxima Legislatura Constitucional, a fin de que, se lo tuviese a bien, se serva apropiar la cantidad necesaria para que tenga ecsacto cumplimiento

En fe de lo cual los infrascritos han firmado dos de un tenor, en Guayaquil, a cinco de Febrero de mil ochocientos cincuenta i tres

(Signed) F MARCOS
COURTLAND CUSHING

NOTES

The source of the text of this convention printed above is a copy, in English and Spanish, which is incorporated in a record copy, in Spanish, of a paper entitled "Conferences and Convention in the case of Seth Driggs" (D.S., Legation Archives, Ecuador, Communications to the Government of Ecuador, 1848–56, 353–75). From the final clause of the convention it appears that "two of one tenor" were signed; but no signed original is now available. A copy of the English version of the convention was transmitted to the Department of State with the despatch of Courtland Cushing, Chargé d'Affaires to Ecuador, dated February 18, 1853 (D.S., 2 Despatches, Ecuador, No. 30, enclosure E).

THE FULL POWERS

Although it is not so stated in the convention, copies of the full powers were exchanged (*ibid.*, No. 29, February 1, 1853). Cushing had been given a full power under date of September 10, 1851, authorizing him "to agree, treat, consult and negotiate of and concerning claims of citizens of the United States against the government of the late Republic of Colombia and against the government of Ecuador" (D.S., 3 Credences, 411). A copy of the full power of the Ecuadoran Plenipotentiary is with Cushing's despatch of February 1, 1853, above cited (enclosure C); in translation it reads as follows:

José María Urbina, President of the Republic of Ecuador

To all who shall see these presents, Greeting:

Be it known that with the purpose of insuring reciprocal relations and perfect harmony between Ecuador and the Republic of the United States and in order to remove every reason for disaccord, and reposing trust and special confidence in the integrity, prudence, and ability of Dr. Francisco Marcos, I have decided to give him full powers and every kind of authority for and in the name of the Republic of Ecuador to meet and confer with any person or persons duly authorized by the Government of the United States and invested with like power and authority, and with the said person or persons to treat, consult, and negotiate regarding the

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claims which concern citizens of the United States against the Government of the former Republic of Colombia and the Government of Ecuador, and to make and sign a convention or conventions regarding the premises, transmitting the same to the President of Ecuador for his ratification subject to the approval and consent of the Congress.

In witness whereof I have ordered these presents to be sealed with the great seal of the Republic. Given and signed by my hand and countersigned by the Minister Secretary of State and of Foreign Relations. At Guayaquil the tenth of January in the year of our Lord one thousand eight hundred and [Seal] fifty-three and the ninth of liberty.[1]

JOSÉ MARÍA URBINA

The Minister of Foreign Relations
MARCOS ESPÍNEL

THE CASE OF THE "NATIVE"

The facts in the case of the *Native* are stated in the notes to the convention with Venezuela of November 16, 1846 (Document 123), and to the convention with New Granada of April 25, 1848 (Document 131). As the events from which the case arose took place in 1828, the claim was originally one against the former Republic of Colombia. The liability therefor had devolved upon the three successor Republics (see the notes to Document 67), the share of Ecuador being 21½ percent. For the settlement here, the basis taken was that of the previous convention with Venezuela.

THE SETTLEMENT

Under date of January 17, 1853, Cushing transmitted to Dr. Francisco Marcos, the Ecuadoran Plenipotentiary, copies of the mentioned conventions with Venezuela and with New Granada, writing as follows (D.S., 2 Despatches, Ecuador, No. 29, February 1, 1853, enclosure E):

In cases of this sort strict justice and sound policy require that a government should insist upon complete reparation for its injured citizens. With this principle in view the sum of $33,510 which was adopted as the basis of settlement with Venezuela appears to the undersigned quite insufficient, but he is nevertheless willing to regard that settlement as a precedent and adopt the same basis in adjusting the proportion of Ecuador. He therefore respectfully proposes that the Government of Ecuador will agree to pay its proportion, to wit, $7204.65 cents in two annual instalments, with interest thereon at the usual rate in Ecuador, from the 16th day of November 1846 the date of the said Convention with Venezuela

The principal sum proposed by Cushing was written into the convention; but the Plenipotentiary of Ecuador had raised objections in the matter of interest, and this point was adjusted by the agreement to pay interest at 6 percent from April 25, 1848, the date of the convention with New Granada (Document 131).

Article 4 provided for submission of the convention to the Congress of Ecuador, but nothing has been found in the despatches regarding approval of the convention or appropriation of the necessary moneys. Payment by the Government of Ecuador was delayed beyond the

[1] The reference appears to be to the termination on March 6, 1845, of the rule of Juan José Flores as President of Ecuador.

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dates specified in the convention. Settlement was finally made by means of three *libranzas*, or drafts, on the Treasurer of the Custom-house at Guayaquil, which were issued by the Treasury of Ecuador to the Chargé d'Affaires of the United States in October 1855 in the amounts of $5,191.69, $5,353.35½, and $96.80, including interest to January 15 and June 30, 1856, the dates of maturity of the *libranzas* (D.S., 3 Despatches, Ecuador, No. 62, October 17, 1855, and enclosures A, C, and F; *ibid.*, No. 64, November 21, 1855; Legation Archives, Ecuador, Communications to the Government of Ecuador, 1848–56, 444–45; despatch No. 62 is printed in part in Manning, Diplomatic Correspondence of the United States, 1831–1860, VI, 370–72).

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Treaty Series No. 123
10 Statutes at Large, 988–91
18 *ibid.*, pt. 2, Public Treaties, 326–29

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GREAT BRITAIN : FEBRUARY 8, 1853

Convention for the Settlement of Claims, signed at London February 8, 1853. Original in English.
Submitted to the Senate February 24, 1853. (Message of February 23, 1853.) Resolution of advice and consent March 15, 1853. Ratified by the United States March 17, 1853. Ratified by Great Britain June 29, 1853. Ratifications exchanged at London July 26, 1853. Proclaimed August 20, 1853.

Whereas Claims have at various times since the signature of the Treaty of Peace and Friendship [1] between The United States of America and Great Britain, concluded at Ghent on the 24th of December 1814, been made upon the Government of the United States on the part of Corporations, Companies, and private Individuals, Subjects of Her Britannic Majesty, and upon the Government of Her Britannic Majesty on the part of Corporations, Companies, and private Individuals, Citizens of the United States; And Whereas some of such Claims are still pending, and remain unsettled;—The President of the United States of America, and Her Majesty The Queen of the United Kingdom of Great Britain and Ireland, being of opinion that a speedy and equitable settlement of all such Claims will contribute much to the maintenance of the friendly feelings which subsist between the two Countries, have resolved to make arrangements for that purpose by means of a Convention, and have named as Their Plenipotentiaries to confer and agree thereupon, that is to say:—

The President of the United States of America,—Joseph Reed Ingersoll, Envoy Extraordinary and Minister Plenipotentiary of the United States to Her Britannic Majesty;—

And Her Majesty The Queen of the United Kingdom of Great Britain and Ireland,—The Right Honourable John Russell (commonly called Lord John Russell) a Member of Her Britannic Majesty's Most Honourable Privy Council, a Member of Parliament, and Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;—

Who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed as follows:—

[1] Document 33.

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ARTICLE I.

The High Contracting Parties agree that all Claims on the part of Corporations, Companies, or private Individuals, Citizens of the United States, upon the Government of Her Britannic Majesty, and all Claims on the part of Corporations, Companies, or private Individuals, Subjects of Her Britannic Majesty, upon the Government of the United States, which may have been presented to either Government for it's interposition with the other since the signature of the Treaty of Peace and Friendship [1] concluded between the United States of America and Great Britain at Ghent, on the 24th of December 1814, and which yet remain unsettled, as well as any other such Claims which may be presented within the time specified in Article III. hereinafter, shall be referred to two Commissioners to be appointed in the following manner, that is to say:—One Commissioner shall be named by The President of the United States, and one by Her Britannic Majesty. In case of the death, absence, or incapacity of either Commissioner, or in the event of either Commissioner omitting or ceasing to act as such, The President of the United States, or Her Britannic Majesty, respectively, shall forthwith name another person to act as Commissioner, in the place or stead of the Commissioner originally named.

The Commissioners so named shall meet at London at the earliest convenient period after they shall have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn Declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own Country, upon all such Claims as shall be laid before them on the part of the Governments of the United States and of Her Britannic Majesty, respectively; and such Declaration shall be entered on the record of their proceedings.

The Commissioners shall then, and before proceeding to any other business, name some third person to act as an Arbitrator or Umpire in any Case or Cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person; and in each and every Case in which the Commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be the Arbitrator or Umpire in that particular case. The Person or Persons so to be chosen to be Arbitrator or

[1] Document 33.

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Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn Declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such Arbitrator or Umpire, another and different person shall be named as aforesaid to act as such Arbitrator or Umpire in the place and stead of the person so originally named as aforesaid, and shall make and subscribe such declaration as aforesaid.

ARTICLE II.

The Commissioners shall then forthwith conjointly proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such Claims in such order and in such manner as they may conjointly think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective Governments, in support of, or in answer to, any Claim, and to hear, if required, one person on each side, on behalf of each Government, as Counsel or Agent for such Government, on each and every separate Claim. Should they fail to agree in opinion upon any individual Claim, they shall call to their assistance the Arbitrator or Umpire whom they may have agreed to name, or who may be determined by lot, as the case may be; and such Arbitrator or Umpire, after having examined the evidence adduced for and against the Claim, and after having heard, if required, one person on each side as aforesaid, and consulted with the Commissioners, shall decide thereupon finally and without appeal. The decision of the Commissioners, and of the Arbitrator or Umpire, shall be given upon each Claim in writing, and shall be signed by them respectively. It shall be competent for each Government to name one person to attend the Commissioners as Agent on it's behalf, to present and support Claims on it's behalf, and to answer Claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The President of the United States of America, and Her Majesty The Queen of the United Kingdom of Great Britain and Ireland, hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive upon each Claim decided

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upon by them or him respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

It is agreed that no Claim arising out of any transaction of a date prior to the 24th of December 1814, shall be admissible under this Convention.

ARTICLE III

Every Claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any Case where reasons for delay shall be established to the satisfaction of the Commissioners, or of the Arbitrator or Umpire in the event of the commissioners differing in opinion thereupon; and then and in any such Case, the period for presenting the Claim may be extended to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every Claim within One Year from the day of their first meeting. It shall be competent for the Commissioners conjointly, or for the Arbitrator or Umpire if they differ, to decide in each Case whether any Claim has or has not been duly made, preferred, or laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this Convention.

ARTICLE IV

All Sums of money which may be awarded by the Commissioners, or by the Arbitrator or Umpire, on account of any Claim, shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the decision, without interest and without any deduction, save as specified in Article VI hereinafter.

ARTICLE V.

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every Claim upon either Government arising out of any transaction of a date prior to the exchange of the Ratifications of the present Convention; and further engage that every such Claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE VI

The Commissioners and the Arbitrator or Umpire shall keep an accurate record and correct minutes or notes of all their proceedings,

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with the dates thereof, and shall appoint and employ a Clerk, or other persons, to assist them in the transaction of the business which may come before them.

Each Government shall pay to it's Commissioner an Amount of Salary not exceeding Three Thousand Dollars, or Six Hundred and Twenty Pounds Sterling, a year, which amount shall be the same for both Governments.

The Amount of Salary to be paid to the Arbitrator (or Arbitrators as the case may be) shall be determined by mutual consent at the close of the Commission.

The Salary of the Clerk shall not exceed the Sum of Fifteen Hundred Dollars, or Three Hundred and Ten Pounds Sterling, a year.

The whole expences of the Commission, including contingent expences, shall be defrayed by a rateable deduction on the amount of the sums awarded by the Commission; provided always that such deduction shall not exceed the rate of five per Cent on the Sums so awarded.

The deficiency, if any, shall be defrayed in moieties by the two Governments.

ARTICLE VII.

The present Convention shall be ratified by The President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In Witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the Seals of their Arms.

Done at London the Eighth day of February, in the Year of Our Lord One Thousand Eight Hundred and Fifty Three.

[Seal] J R INGERSOLL
[Seal] J RUSSELL

NOTES

The file papers are in usual form and require no special comment. In chronological order they are the signed original of the convention, the attested Senate resolution of March 15, the duplicate United States instrument of ratification of March 17, the British instrument of ratification of June 29 (which now lacks the seal appendant), the certificate of the exchange of ratifications at London of July 26, and the original proclamation of August 20, 1853.

The American Plenipotentiary had a full power dated December 28, 1852 (D.S., 3 Credences, 445); this was in customary form, except

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that the American Minister was styled "Joseph R. Ingersoll appointed Envoy Extraordinary and Minister Plenipotentiary of the United States of America at the Court of the United Kingdom of Great Britain and Ireland"; the word "appointed" is properly used to designate an Envoy during the interval between the date of his commission and the presentation of his credentials; that ceremony in this case had occurred on October 16, 1852.

Other than in the formal words of the preamble, there appears no reference to a full power of the British Plenipotentiary, Lord John Russell, Secretary of State for Foreign Affairs.

The Exchange of Ratifications

On March 23, 1853, Nathaniel G. Upham, of New Hampshire, was appointed Commissioner of the United States pursuant to Article 1 of the convention. On the following June 23 Judge Upham wrote from Concord, New Hampshire, to Secretary of State Marcy that he had made arrangements to leave for England on July 9 and requested instructions, adding that he did not expect that the Commission would open until September, when the Agent of the United States, John Addison Thomas, of New York, would arrive (D.S., Claims Papers, Great Britain, 1853, envelope 9, folder 3).

Acknowledging the above-mentioned letter, Marcy wrote thus in answer thereto (D.S., 16 Instructions, Great Britain, 242–44, July 1, 1853):

> Your letter of the 23d Ultimo has been received. I shall avail myself of the occasion of your embarking for England in the Steamer of the 9th instant to make you the bearer of the Presidents ratification of the Convention for the adjustment of claims to which you advert. For this service you will be allowed your expenses hither, if you have time to come on and take charge of the Treaty; but if you have not and you will telegraph immediately to that effect, the treaty will be sent on to you at New York, on the 8th. In the latter event the expense of your passage to Liverpool and of your journey to London only will be allowed. Of these expenses you will keep an account to be supported by vouchers whenever they can be obtained, & draw on this Department for the amount.
>
> As your functions under the Convention will be purely judicial no instructions from me will be necessary. It would be advisable for you to be in London at the exchange of the ratifications, and immediately afterwards seek an interview with the British Commissioner, and settle with him the forms to be required of claimants in presenting their cases. These rules should be officially signed by both of you, and a copy or copies sent hither to be published for general information. The original papers in this Department relative to the claims shall be transmitted to you in due season
>
> Having submitted the convention to the Attᵞ Genˡ for his opinion with regard to the construction to be placed upon certain clauses in it, I now transmit to you a copy of his reply for your guidance and information.[1]

In reply to the foregoing, Judge Upham wrote from New York on July 7 that he was unable to go to Washington and "would like to have you send the Treaty by Messenger to me at the Astor House to be forwarded at noon the ninth inst. by my son *Nathaniel L Upham* or by

[1] This opinion of Attorney General Caleb Cushing, dated June 29, 1853, dealt with salaries and expenses under the convention (6 Opinions of the Attorneys General, 65–67).

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myself, should you prefer to send [it] by me" (D.S., Claims Papers, Great Britain, 1853, envelope 9, folder 3). While the foregoing letter is marked as received on July 8, Marcy, seemingly with knowledge of its content, wrote under date of July 7 to Nathaniel L. Upham, the son, naming him as bearer of despatches and giving him the customary instructions in such cases, as follows (D.S., 16 Instructions, Great Britain, 245–46):

> It being deemed advisable that a Special Agent should be sent to London charged with the ratification by this Government, of the Convention for the settlement of claims recently concluded between the United States and Great Britain, and since confirmed by the Senate, I have thought proper to appoint you for that service. You will therefore embark in the steamer which is to sail from New York on the 9th instant, for Liverpool Upon your arrival at that port, you will immediately proceed to London, where you will deliver to Joseph R. Ingersoll, Esqre the Minister of the United States in that city, the ratified copy of the Convention which is now placed in your hands.
>
> As the ratification of the British Government will doubtless be ready when you reach there or soon afterwards you may wait for it and bring it with you if you think proper to return immediately to this country for that purpose.
>
> Your compensation will be at the rate of six dollars a day, from the time of your departure from New York until your return to this city with the British ratification if such shall be your determination, unless your absence shall be unnecessarily protracted. You will also, whilst employed on this service, be allowed your necessary travelling expenses, except those incurred by you during your stay in London. Of these allowable expenses you will keep an account to be supported by vouchers wherever they can be obtained.

It was accordingly Nathaniel L. Upham who delivered the United States instrument of ratification to the Minister of the United States at London, Joseph R. Ingersoll, with the covering instruction of July 7 and the usual full power to effect the exchange of ratifications, which had been issued on the previous March 18 (*ibid.*, 246–48; D.S., 3 Credences, 451; 64 Despatches, Great Britain, No. 50, July 22, 1853).

The exchange of ratifications was effected at London on July 26; as Nathaniel L. Upham was appointed secretary or clerk of the Commission on October 13, 1853, he did not return to Washington with the British instrument of ratification; that duty was accordingly entrusted by Ingersoll, as he wrote on the following August 4, "to Mr H. G. Somerby, an American gentleman who has been favorably known to me during my residence in England" and who would "proceed directly to Washington and deliver the ratification at the Department of State, receiving a per diem of Six Dollars and his travelling expenses" (*ibid.*, No. 53).

The Negotiations

When this convention was made, claims of nationals of the one country against the Government of the other had troubled Anglo-American relations for two decades or more; this was particularly so in respect of the American claims. These were not so very numerous, as the proceedings under this convention showed; some were trivial; but even one case like that of the *Creole*, to which certain others were similar, could make serious difficulties (see vol. 4, pp. 457–69; Moore,

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International Arbitrations, I, 408–12; Moore, Digest, II, 350–61). Those of the American claims that were based on the exercise of visit or of search on the high seas touched a very sensitive chord of American sentiment; and they awakened strong British feelings as well, because in most such cases the visit and the search had been by British naval officers who were acting for the suppression of the slave trade (see Soulsby, The Right of Search and the Slave Trade in Anglo-American Relations, 39–77, *passim*). The facts of incidents and events off the coast of Africa were apt to be both disputed and difficult of determination; these had become rare after the Webster-Ashburton Treaty of 1842 (Document 99, Article 8; see Soulsby, *op. cit.*, 104); but there were pending cases both of an earlier and of a later date; and even when liability was admitted, as it had been by the British Government in the cases of the *Tigris* and the *Seamew* in 1842 (see *ibid.*, 74), no definitive settlement had been reached by diplomacy [1] (see the remarks on those two cases in the memorandum, printed below, transmitted with the despatch of Abbott Lawrence, Minister at London, of February 18, 1852). Thinking doubtless of his London mission (1841–45), Edward Everett wrote later as Secretary of State that this convention would "relieve the diplomatic intercourse of the two Countries of an oppressive and vexatious burden" (D.S., 16 Instructions, Great Britain, 195–96, February 22, 1853).

With the mentioned despatch of February 18, 1852 (D.S., 63 Despatches, Great Britain, No. 158), there was enclosed a copy of a note addressed to Lawrence by Lord Granville, Secretary of State for Foreign Affairs, under date of the previous January 31, reading thus:

> There are several claims pending respectively between the Governments of Great Britain and of the United States, which, although some of them are of long standing and have been frequently renewed, still remain undecided.
>
> These claims arise chiefly from losses sustained by private individuals of each nation, and a speedy settlement of them will be to the honour of both Governments, and will contribute much to maintain the friendly feelings which now exist between the two nations.
>
> With a view then to insure an early and fair adjustment of all such unsettled claims on either side, I have the honour to propose to you for the consideration of your Government, that the British and the United States' Governments should each appoint two Commissioners, who should be empowered to examine together, and determine the terms of settlement of every yet unsettled claim which has been presented by either Government to the other since the Peace of 1814.[2]
>
> I would further propose that the Commissioners should hold their sittings in London; that they should choose, on their first meeting, an umpire to whom may be referred any undecided case in the event of disagreement between the Commissioners; and that any case decided on by the Commissioners or by the umpire should be received as final by each Government, and as barring all further consideration of the case so decided.
>
> I would in addition propose that, when all the claims shall have been so adjusted, a Convention or formal agreement should be prepared embodying those decisions, and binding each Government to give effect to them.

[1] The nature of the discussions may be seen from 34 British and Foreign State Papers, 912–23, 968–78.

[2] Document 33.

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The covering despatch of Lawrence, which follows, is of interest, although the writer was but illy informed on the subject of the claims; his conclusion that there were "really but five [American] claims" (other than those for refund of duties on woolens) was quite mistaken:

I have the honor to acknowledge the receipt of your Despatch N° 72, relative to the claim of Mr Fairclough against the British Government for a return of Duty on Woollens. I was, at the time of its receipt, preparing to address you on the general subject of the claims of Citizens of The United States against this Government.

I have already made you acquainted with the fact that I lost no time in calling Lord Granville's attention to the claims of the owners of the "Jones", and of the "Tigris" and "Seamew". I now enclose a copy of a Letter from His Lordship, suggesting a Joint Commission to settle *all* claims between the two Gov'ts respectively.

Under my directions a search has been made in the Archives of the Legation, in order to ascertain what claims appear by them to remain open. I annex a memorandum of the result, by which it would appear that there are really but five claims (with the exception of the claims for the woollen Duties) viz: 1° the "Jones"—2° the "Tigris" and "Seamew"—3° the claim of Rogers and C° for return of duty on rum at New Zealand—4° the "Only Son"—and 5° the "John". Of these, the second and fourth have already been allowed in principle, and it only remains to settle the amount to be paid on them: the first and third have been distinctly rejected by the British Government: and no answer has been made to the fifth.

Should the President decide to recommend such a commission, I hope the Archives of the Department will be searched, to see if the above result be correct. The Archives of this Legation begin only with the year 1826.

But it seems to me that there are not enough claims to warrant the expense of a Commission. I think the claims against the United States may be adjusted in Washington, and those against the British Government here. I would respectfully recommend, in lieu of the plan of Lord Granville, that the United States advise, for the settlement of the claims against H.M. Government, that an arbitrator be appointed by each Government, (with power to select an umpire), who shall meet in London and consider the claims on the evidence already furnished, or to be furnished by some stated time (but without counsel) and that their decision, or that of the Umpire, be embodied in a formal agreement: and that as to the claims against the United States Government the same plan be pursued at Washington: and that the expenses of these proceedings respectively be assessed on the successful claimants *pro ratâ*. I think this plan would be agreed to by Lord Granville.

Should the President agree with me in these views, I further respectfully suggest that M^r^ [J. C. Bancroft] Davis, the Secretary of this Legation be named the Arbitrator on the part of the Government of the United States in London. He has made himself acquainted with the claims, and would suitably represent the interests of the claimants. Lord Granville mentioned his name to me in an early conversation as one with whom he would be willing to associate some person, to be named by himself, to examine these claims.

I hope to receive instructions on this subject at an early day, as the claims are long standing, and the duration of the present Ministry is uncertain. It would seem to be necessary that some such plan should be adopted for the adjustment of the cases in which the two Governments have failed to agree.

The memorandum referred to in the foregoing despatch of Lawrence comprises a list, under twenty-seven heads, some of which are groups or classes, of the claims found mentioned in the archives of the Legation and thought not to have been definitively adjusted; that memorandum is neither a complete nor an accurate statement; it is here printed with references which are for the most part to the proceedings of the Commission under this convention and which include, for

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claims there listed, the numbers assigned thereto in those proceedings (see the list of docketed claims before the Commission which appears below under the heading "The Commission"):

Statement of Claims made upon the British Government through the United States' Legation at London, unanswered or not admitted by that Government, or not yet paid, as exhibited by the Records & Original papers in the Archives of the Legation, February 13th, 1852.

Memorandum. The Records begin with the year 1826, and the Mission of Mr Gallatin. The file of Notes from the Department begins with the Mission of Mr Barbour in 1828: that of Notes from the British Govt with the Mission of Mr McLane in 1829

Mr Young's claim for captured Slaves.[1]

Sent to Mr Barbour from the Departmt 20 June 1828. Presented to the British Govt 15 Dec. 1828, and declared by Lord Aberdeen to be "inadmissible", because the Slaves were a prize of War, 28 March 1829. Ld. Aberdeen's answer transmitted to the Department 29 Mar. 1829.

"Jubilee" [2]

It appears by Mr Gallatin's Despatch No 45 that this was a claim for Salvage, disallowed by Mr Canning: but there is no other correspondence touching it on the files.

"Rapid", "Fox", & "Fly" [3]

These were vessels belonging to a Mr Oliver of Baltimore seized by British vessels, and unjustly condemned by the Admiralty Courts. He made personal application for remuneration and being refused asked Mr Gallatin's aid, who wrote, April 3. 1827, to the Department asking Instructions, but advising that the claim should not be presented. On the 30 Nov. 1829 Mr Van Buren instructed Mr McLane to present the claim. Mr McLane examined the papers and reported that he considered the case hopeless but would present it if again instructed to do so. Mr Christopher Hughes was afterwards sent out as an agent to adjust the claims, and Mr Vail instructed to lend him his "official countenance" (26 May 1834)

"Cicero" [4]

Aug. 7. 1828, Department to Mr Barbour instructing him to present the claim.
Dec. 28. 1828, Mr Barbour to the Department, returns the papers declining to present it, as it has been repeatedly refused.
Oct. 2. 1834, Department to Mr Vail renewing the instructions.
Nov. 18. 1834, Mr Vail to the Department, declines to present the claim

"Olive Branch" [5]

Mr Ira Allen of Vermont came to Europe in 1796, bought in France a quantity of muskets for the Vermont Militia which were shipped on board the "Olive Branch". This was captured and condemned, and an appeal taken. Mr Allen was eventually ruined by his losses, and died. In 1829, July 20, Mr McLane was directed to present the case, which he did 9 Dec. 1830.
Aug. 17. 1831 Lord Palmerston replied rejecting the claim.

[1] No. 11. Disallowed.
[2] No. 37. Dismissed.
[3] These cases antedated the War of 1812. They were not before the Commission.
[4] No. 36. Dismissed.
[5] No. 40. Dismissed.

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"Evelina" [1]

Run into by the British man-of-war *"Winchelsea"* [*Winchester*]. Claim sent by the Department to Mr Vail, 8 Nov. 1833, presented by him to the British Govt 17 Dec. 1833, rejected by Lord Palmerston 6 Feb. 1834, and the Govt acquainted thereof by Mr Vail 14 Feb. 1834.

"Enterprize" [2]

Claim for certain slaves taken by the Colonial authorities from the vessel on her putting into the Bermudas in distress. Sent to Mr Vail by the Department 28 Mar. 1835, presented by him to the British Govt 11 May 1835. Rejected by Ld. Palmerston 11 Dec. 1837. Mar. 12. 1838 the Department instructed Mr Stevenson to refrain from pressing the claim, as it was desireable to negotiate for the settlement of the principle on which it was founded.

"Maria Dolores".[3]

A capture seized in the Barbadoes: presented by Mr Vail to the British Govt 20 Dec. 1834, and by them referred to a Court of Law for settlement. (*See Lord Palmerston's Note of 13 Nov. 1834.*) This claim was revived in Mr Everett's time, but the claimants were again sent to a Court of Law. (*See Lord Aberdeen to Mr McLane 14 Jan. 1846.*)

"Tonnage Duties in the Bahamas".[4]

There was much correspondence during Mr Vail's Mission on this subject: but it would seem to have been adjusted (*See Lord Palmerston's Note to Mr. Vail Mar. 20. 1834.*)

"Duties on Rough Rice". [5]

There was also much correspondence on this subject during Mr Stevensons and Mr Everetts Missions: but it appears to have been finally adjusted during Mr Bancroft's.

"Mary" [6]

Illegally boarded and seized by British Officers in the W. Indies. Sent by Department to Mr Stevenson 18 Mar 1840, and rejected by Lord Palmerston Aug. 27, 1841 as being a Spanish Bottom

"Iago" & "Hero".[7]

Seizure, detention and pillage in the West India Sea. Sent by the Department to Mr Stevenson 5 Decr 1840,—presented by him to Lord Palmerston, 27 Feb. 1841, and rejected Aug. 5. 1841, on the ground that no damage was done, but saying that the British Cruizers had no right to disturb the voyages of the vessels.

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[1] No. 33. Disallowed.
[2] No. 30. Award, $49,000.
[3] No. 14. Held not within the jurisdiction of the Commission.
[4] These were claims for refunds which had been admitted and settled.
[5] See Document 117.
[6] Not presented to the Commission.
[7] The instruction in the case of the *Iago* was of December 3, and that in the case of the *Hero* was of December 26, 1840 (D.S., 15 Instructions, Great Britain, 15–16, 12). The *Iago* case was not presented to the Commission; the *Hero* claim, No. 21, was disallowed.

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"Jones" [1]

Illegal seizure at St. Helena, removal to Sierra Leone, and condemnation. Sent by Dep't., 1 Mar. 1841,—presented to the British Govt 16 April 1841, by Mr Stevenson, argued and reargued, and finally rejected by Lord Palmerston.

"Tigris" & "Seamew" [2]

Sent by the Dep't at the same time with the *"Jones"*. Was made the subject of very much correspondence during the missions of Mr Everett and Mr McLane: On Lord Aberdeen's leaving Office an offer of £4000 was made by him, and rejected by Mr McLane who demanded £4500

"Duties on Woollens" [3]

There was correspondence on this subject during Mr Vail's Mission which was revived in Mr Everett's, Mr Webster instructed him in Feb. 1842 to present the claims, which he accordingly did 22 Sept. 1843. The subject was revived with Mr McLane, and on the 31 Dec. 1845 he wrote the Department that he had "obtained from Lord Aberdeen an assurance that the duties improperly levied should be refunded;" and that on the 3d Dec. 1845 "an Order was sent from the Treasury to the Commissioners of Customs to authorize them to carry the object fully into effect."

"Washington" [4]

A case of seizure of a fishing vessel, presented to Lord Aberdeen by Mr Everett 10 Aug. 1843 and after much argument rejected finally 10 Mar. 1845. But it would seem to have been settled in the same note, giving as a favor the right to fish in the Bay of Fundy. No claim was made for damages.

"Argus" [5]

Much the same as the above. Presented to the British Govt by Mr Everett 9 Oct. 1844, rejected 10 Mar. 1845.

"Cyrus".[6]

Boarded by the Officers of the "Alert" on the African coast, and papers taken away: whereupon the Master abandoned her, and claims damages.
12 Dec. 1844, Mr Calhoun to Mr Everett
20 June 1845, Mr Everett to Lord Aberdeen
15 Sept. 1845, Lord Aberdeen to Mr McLane, replies that true the vessel was boarded, being very suspicious; true the papers were taken, for which Her Majesty's Govt do not attempt to justify the Commander: but untrue that it was done in a violent manner.

[1] No. 3. Award, $100,625.
[2] No. 17. Award, $24,006.40.
[3] See No. 35.
[4] No. 26. Award, $3,000.
[5] No. 19. Award, $2,000.
[6] No. 4. Disallowed.

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"Robert".[1]

Illegally seized and detained at Sierra Leone.
3 July 1843. Mr Webster sends the case to Mr Everett.
25 Aug. 1843. Mr Everett presents it to Lord Aberdeen.
27 Dec. 1844. Mr Calhoun sends a claim for part of the cargo.

"Hermosa".[2]

Was wrecked on the Abaco reef, and the crew and a quantity of slaves carried to Nassau and the latter set free. 24 Feb. 1842 the Dep't instruct Mr Everett to demand compensation which he does 3d May following. The 20th same month Lord Aberdeen declines absolutely

"Roderick Dhu" [3]
"John A. Robb" [4]
"Eliza" [5]
"Joseph Cowperthwaite" [6]

unimportant as respects damages. In the Second the conduct of the British Lieutenant was disavowed 14 Jany 1846. In the Fourth the Governor of Cape Coast Castle was exonerated from the charge 13 Dec. 1845.

[1] Under this head fall two claims. The one said to have been sent by Mr. Calhoun on December 27, 1844, was put forward by Gilman, Smull & Company, of New York, for a portion of the cargo of the brig *Robert;* this property, while in the factory of a trader (a native woman) at Rio Pongo, on the west coast of Africa (French Guinea), had been destroyed by a force from two British vessels of war in April 1841. The claim was for $3,327.77, the estimated value of the property in New York. The British Government was willing to pay the actual value, or $1,706.60. With the assent of the claimants, this latter amount was accepted, paid, and remitted to Gilman, Smull & Company on January 26, 1846 (see 34 British and Foreign State Papers, 909–12, 983–86; D.S., 15 Instructions, Great Britain, 239–40, 264–65, December 27, 1844, and October 16, 1845; 54 Despatches, Great Britain, No. 244, January 22, 1845, and enclosure; 56 *ibid.*, No. 5, September 18, 1845, and enclosure; *ibid.*, No. 31, January 3, 1846, and enclosure; 35 Domestic Letters, 287, 381, October 8, 1845, and January 26, 1846; Claims Papers, Great Britain, 1853, envelope 5, folder 7).

The other claim, stated to have been sent by Mr. Webster on July 3, 1843, and to have been presented by Mr. Everett on August 25, 1843, arose from a controversy with the customs officials at Sierra Leone in April 1843, involving the brig *Robert* (see the papers in *ibid.*). This claim was No. 38, dismissed by the Commission.

[2] No. 31. Award, $16,000.

[3] This case was not presented to the Commission; the "outrage" alleged was the boarding of the vessel off the African coast on January 4, 1843; the visit lasted less than an hour (see D.S., Miscellaneous Letters, March–May 1843, letter of James Lawrence Day of March 6, 1843, and enclosure; 15 Instructions, Great Britain, 85–87, May 11, 1843).

[4] No. 13. Disallowed.

[5] No reference to a case of this name has been found in the diplomatic correspondence or in the records of the Commission.

[6] No. 25. Dismissed.

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Rogers, Bros. & Co.[1]

Claim for return of duty on Rum at New Zealand.
Mr Everett to Lord Aberdeen 26 Dec. 1843, presenting the case.
Reply from Lord Aberdeen 10 Feb. 1844, but giving no definite answer.
Mr Everett to Lord Aberdeen 20 May 1844, sending additional papers.
Reply from Lord Aberdeen, 2 Aug. 1844, still no definite answer.
The case was strengthened with additional papers sent by Mr McLane 10 July 1846, and no answer to the claim being received, Mr Bancroft, on the 27 Nov. 1846, called attention to it again. Lord Palmerston finally rejected the claim 24 Feb. 1847.

"Popmunnett" [2]

That she was boarded at St. Helena by British Officers, the book taken from her (with his consent) and certain articles of bedding &c. forcibly removed. Dep't to Mr Bancroft, 12 Dec. 1846. Claim made for damages to Lord Palmerston 13 Jan 1847.

"Brookline" [3]

Interruption of a voyage by the impressment of a Seaman. Dep't to Mr Bancroft 29 Dec. 1847. Mr Bancroft to Lord Palmerston 31 January 1848.

"Only Son".[4]

The position of this case is described in Mr Lawrence's Despatch No 66, July 16. 1850.

"Louisa" [5]

Complaint against the British Consul at Rio, and Lieut. Tomlinson of the British Navy.
Jan. 8. 1851 Dep't to Mr Lawrence
Feb. 3. 1851 Mr Lawrence to Ld. Palmerston presenting the case.
Sept. 23. 1851. Ld. Palmerston sends a statement in exculpation of the Officers charged.

"John" [6]

Jany 13. 1851. Dep't. to Mr Lawrence
Mar. 7. 1851. Mr L. to Ld. Palmerston.

When the response from Washington to the proposal of Lord Granville was written, that statesman had been replaced at the Foreign Office by Lord John Russell; following the death of Daniel Webster on October 24, 1852, Edward Everett was Secretary of State; and

[1] No. 1. Award, $7,676.96.
[2] This case does not appear on the official docket of the Commission. There is, however, a file of papers in the case of the whaling bark *Popmunett* certified on June 29, 1854, under the seal of the Legation, by William Henry Welsh, Attaché to the Legation of the United States at London, "to be correct copies of certain documents in the case, on file in this Legation". Those papers, of nineteen single sheets, are tied together with tape. They comprise a cover page, seventeen numbered pages, and the page of certification; on the cover page are the name of the vessel and, in another hand, "not sustained Dismissed" (D.S., Claims Papers, Great Britain, 1853, envelope 9, folder 8).
[3] No. 32. Disallowed.
[4] No. 8. Award, $1,000.
[5] No. 28, *sub nom.* George W. Atwood. Disallowed.
[6] No. 5. Award, $13,608.22.

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Joseph R. Ingersoll was Minister at London as successor to Abbott Lawrence.

The proposal which had been made by Granville was welcomed by President Fillmore; and Everett wrote this instruction to Ingersoll under date of December 29, 1852, authorizing him to sign a convention and transmitting a full power for the purpose (D.S., 16 Instructions, Great Britain, 181–84):

With his despatch N° 158 of the 18th of last February your predecessor transmitted a copy of a note from Lord Granville, Secretary of State for foreign affairs proposing the establishment of a commission for the settlement of the private claims of citizens of the United States against the Government of Her Britannic Majesty and of British subjects against the Government of the United States. Lord Granville's plan was, that the British and United States Governments should each appoint two Commissioners who should be empowered to examine together and determine the terms of settlement of every yet unsettled claim, which has been presented by either Government to the other since the peace of 1814, that the Commissioners should hold their sittings in London, and that they should choose on their first meeting an Umpire to whom may be referred any undecided case in the event of disagreement between the commissioners and that any case decided on by the Commissioners or by the Umpire should be received as final by each Government and as barring all further consideration of the case decided.

The President thinks favorably of this suggestion. He is of opinion that justice and the honor of the two Countries require that some prompt and efficient mode of adjusting these claims should be devised. He feels how severely the diplomatic intercourse between the two Governments has of late years been taxed to carry on the discussions relative to private claims, generally and often without a satisfactory result. He knows of no better method of remedying these evils than a joint commission like that proposed.

He thinks however that a board of five is unnecessarily large, and that one Commissioner for each Government with an Umpire would be more likely to perform the duty in a satisfactory manner. The experience of this Government on several occasions has shown that a board of three is numerous enough for a purpose of this kind. The Umpire should be chosen by joint agreement if practicable, and failing that by lot.[1] The Commission to hold its sittings in London and to examine and decide every case within one year. The President thinks it necessary to fix a term to its duration and he has no doubt that one year is amply sufficient The Commission under the Florida treaty,[2] by which several hundred cases were adjudicated, terminated its labors in three years. The Commission under the Convention with France[3] in 1831 was limited to two years and afterwards extended six months. The Commission under the Convention with the two Sicilies[4] was allowed to sit one year only.[5] The President thinks that a salary of three thousand dollars per annum will be sufficient to command the services of competent persons. This is the salary received by the Commissioners under the French treaty of 1831, who sat in Washington where living is as dear as in London. The Commission should be authorized to employ a clerk on a salary of fifteen hundred dollars to be appointed by the board. The expenses of the Commission to be charged pro rata on the sums awarded, which are to be paid by the respective Governments without interest.

[1] As to this suggestion of the lot and the provision therefor in the final paragraph of Article 1 of the convention, see Moore, International Arbitrations, I, 391–93.

[2] Document 41.

[3] Document 71.

[4] Document 74.

[5] The three instances mentioned were all domestic commissions; for their respective proceedings, see Moore, International Arbitrations, V, 4487–4518, 4447–85, 4575–89. The Commission on the French Indemnity had a duration of about three years and five months; the Commission on the Neapolitan Indemnity sat for eighteen months.

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You are authorized to conclude a Convention for the establishment of such a Commission declaring that no claim shall be received which originated prior to the 24th Decr 1814 the date of the Treaty of Ghent [1] as proposed by Lord Granville. As the Convention will require the assent of the Senate and also the passage of a law to carry it into effect, it is highly desirable that it should be negotiated without delay. Unless it reaches us in season to be acted upon by both branches of Congress before the 4th of March, it will of necessity go over till next winter. The necessary full power to treat upon the subject is accordingly herewith transmitted to you.

Ingersoll received the foregoing from Washington on January 17, 1854, and on that day had a conversation on the subject of the convention with Lord John Russell, to whom he addressed a note on the day following, summarizing his instructions (D.S., 64 Despatches, Great Britain, No. 20, January 28, 1853, and enclosure 8). Three weeks later the convention was signed; the intervening discussions are reported in two despatches of Ingersoll, the relevant passages of which follow (*ibid.*, Nos. 21 and 22, February 4 and 8, 1853):

[*Despatch of February 4, 1853*]

I begin to entertain fears that the Convention for deciding claims upon the Governments of Great Britain and the United States may be delayed beyond the time at which I had at first expected to bring it to a close. This is to be regretted on account of the approaching end of the session of Congress. The very morning of the receipt of your despatch Nº 13, I opened the negotiation personally with Lord John Russell. His subsequent confinement by indisposition caused some delay, and the arrangements of the Queen's Advocate, to whom, it seems, papers of this kind are always submitted, led to more. My interviews with the Foreign Secretary are not yet brought to a close. In the counter-project handed to me yesterday by him, he agrees to several of the points presented by me; vizt,—One Commissioner to be named instead of two, on each side:—the examinations and decisions to be closed within one year from the time of the first meeting:—probably the salaries which I was instructed to propose—Three Thousand Dollars for the Commissioners, and Fifteen Hundred Dollars for the Clerk.

He suggests certain clauses to which there will probably be no objection; vizt, that claims are to be heard which not only have been heretofore presented but which may be presented within six months after the sittings begin, and somewhat longer if the Commissioners so agree. In case of death, absence, or inability to act on the part of either Commissioner, another to be appointed. Commissioners and umpire to sign a declaration that they will decide impartially, &c. Competency for each Government to name one person to attend as its agent or counsel.

Nothing has been agreed on as to the fund out of which the expenses shall be paid. Your preference is for a *pro rata* assessment on the claims allowed. The counter-projèt merely stipulates for payment by the respective Governments. It also contemplates the power of appointing a Clerk, *or Clerks*. I do not see the necessity for providing for more than one.

I am to meet Lord John Russell to day at Four o'clock; and I shall continue to urge the negotiation to as speedy a conclusion as practicable.

[*Despatch of February 8, 1853*]

The Convention for deciding claims upon the two Governments is completed. It is forwarded in the hope that it may reach the Department in due season. Should it not be fully satisfactory to the President, I hope that it may be returned without being laid before the Senate. Yet I am not aware of anything that can be

[1] Document 33.

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regarded as the slightest departure from the views communicated by you, unless it be the modification of the article which provides for paying the expenses of the joint commission. It was urged that the whole amount of claims allowed might be small, and in that case the assessment upon them of the entire cost of the commission would be extremely burthensome. I suggested a limitation of the assessment to Five per cent., by way of compromise; and this was agreed to. If the aggregate be large, Five per cent. will cover without doubt the charges. If it be small, the objection I have mentioned is correct, inasmuch as placing the whole expense upon it would savour of injustice. The option of each Government to appoint an agent, both to represent the claims of its own citizens or subjects and to answer, if necessary, unreasonable ones from citizens and subjects of the other country, seems to be a provision of economy as well as justice. The amount to be allowed may be reduced by due and proper investigation, while just demands may be enforced and sustained by fair argument and illustration.

Details have, of necessity, been added to the outline furnished by Lord Granville's proposition and your communication. But they are designed only to carry the more readily into effect the whole scheme. Lord John Russell was disposed to provide for higher salaries; but he yielded this, and some other points, with much good nature.

I sincerely trust that in substance and form the convention may meet the approval of the President, and that it may be sanctioned by the advice and consent of the Senate.

The convention was received at Washington on February 22 with Ingersoll's despatch of February 8, 1853 (printed in part above), and was sent to the Senate (without accompanying papers) with the following presidential message of February 23 (Executive Journal, IX, 35):

I transmit to the Senate for advice and consent, with a view to ratification, a convention between the United States and Her Britannic Majesty for the adjustment of certain claims of citizens of the United States on the British Government, and of British subjects on the Government of the United States, signed in London, on the 8th instant. Although it is stipulated by the terms of the first article of the convention that the commissioner on the part of this Government shall be appointed by the President of the United States, it is not understood that this stipulation was intended to dispense with the concurrence of the Senate in such appointment.

While the convention was not acted on during the closing days of the Thirty-second Congress, the Senate, by a vote of 30 to 5, advised and consented on the following March 15, during the special session of that body held at the beginning of the Pierce administration (March 4 to April 11, 1853; see *ibid.*, 36, 57, 68); and ratification by President Pierce followed two days later.

The Commission

For the convention of July 17, 1854, extending by four months the duration of the Commission established pursuant to this convention, see Document 167 and the notes thereto.

An account of the Commission and of the proceedings had is in Moore, International Arbitrations, I, 391–425. The Commissioners were, on the part of the United States, Nathaniel G. Upham, of New Hampshire, and, on the part of Great Britain, Edmund Hornby. The Umpire chosen by them pursuant to Article 1 of the convention was Joshua Bates, an American citizen resident in London and senior

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member of the house of Baring Brothers & Company. The Agents for the two Governments (Article 2 of the convention) were respectively John Addison Thomas, of New York, for the United States, and James Hannen for Great Britain. The secretary or clerk appointed by the Commissioners (Article 6) was Nathaniel L. Upham, son of the American Commissioner (see *ibid.*, 391–403).

Upon the termination of the Commission, James Buchanan, Minister at London, wrote these views of the work done (D.S., 66 Despatches, Great Britain, No. 58, January 26, 1855):

> The Commission for the settlement of outstanding claims between the United States and Great Britain, has just terminated; and Judge Upham, the Commissioner on our part, will return home by to-morrow's steamer from Liverpool. The relation which your instructions established between myself and the American Commissioner and Agent, renders it proper for me to express an opinion of the manner in which these gentlemen have respectively performed their duties. This is a pleasing office; because it would scarcely be possible for any individuals to have discharged these duties in a more satisfactory manner. The business of the Commission was conducted by Judge Upham and General Thomas, in their several spheres of action, with much ability, as well as indefatigable industry and perseverance; and the result of their labors has proved to be quite as favorable to our country as could have been reasonably anticipated. They had many serious obstacles to overcome, arising chiefly from the fact, that the Convention had fixed the seat of the Commission at London instead of Washington.
>
> The action of this Commission will be a great relief to the two Governments. All the claims of the citizens and subjects of each on the Governments of the other, which had been accumulating since the date of the Treaty of Ghent, (24 December, 1814) and had given rise to so much diplomatic correspondence, have happily, now been decided and can no longer become subjects of discussion. These claims in number exceeded one hundred, and in amount involved millions of dollars. The sum actually awarded was about $600,000,—of which the American claimants will receive considerably more than one half. In this connection, I cannot forbear to observe that the sum of $3000 per annum, fixed by the Convention as the salary of the Commissioner must have been wholly inadequate to defray the necessary expenses of himself and family in London; and I might make a similar remark in regard to the Agent and his family. Although it became the duty of these gentlemen to investigate and discuss the gravest questions of international law, involving large amounts, yet this salary falls far below even what is allowed as outfit and salary to a Chargé d'Affaires.
>
> The decisions, in the main, of Mr. Joshua Bates, the Umpire, will prove that, he was worthy of the highly responsible trust confided to him. No person has ever doubted his integrity; and his sound judgment and extensive and intimate knowledge of Commercial affairs were highly appreciated by the American Commissioner. His awards in the cases of the Enterprize, the Creole, and the Hermosa, although eminently just in the face of prejudices so extensively prevailing in this country, as well as of decisions of the British Government, afford strong evidence of his independence.

The report of the Commissioners and other papers, including various arguments of counsel and some of the opinions of the Commissioners and of the judgments of the Umpire, are printed in the volume entitled "Report of Decisions of the Commission of Claims . . ." (Washington, 1856), also issued as Senate Executive Document No. 103, 34th Congress, 1st session (serial 824), a volume of 478 pages [1] (hereinafter cited as "Report of Decisions"). The relevant

[1] This book contains much valuable material; but it omits some worthwhile judgments of the Umpire, is poorly edited and indexed, and is not wholly to be relied on (see Moore, International Arbitrations, I, 414–15).

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material in the archives of the Department of State is, in the aggregate, extensive; but at the same time, in respect of various claims, particularly some of those against the United States, it is quite meager. A manuscript volume [1] of 360 pages titled "Record of Proceedings under the Convention of February 8th 1853 between the United States and Great Britain" (hereinafter cited as "Record of Proceedings") contains the report of the Commissioners dated January 15, 1855, the journal of their proceedings, the docket of claims with the awards and judgments thereon, thirty-two signed judgments of the Umpire, the order as to rate of exchange, recapitulations of awards, a table of expenses, an appendix of correspondence, and an index. The unbound manuscripts (hereinafter cited as "Claims Papers") are in nine envelopes containing 124 folders, including one for the papers of each of the docketed claims before the Commission.

There is a British print (London, 1856) of the proceedings of the Commission, with the title "Report of the Proceedings of the Mixed Commission on Private Claims . . ."; while that publication is not strictly official,[2] it was "Compiled from the original by Edmund Hornby, Esq., Barrister-at-Law"; this book [3] (hereinafter cited as "Hornby") of nearly 500 pages has this note of the compiler, dated February 8, 1855, on page 1:

> In consequence of several inaccuracies and omissions in the Journal of the Proceedings of the Commissioners, kept by the Secretary, I have been obliged to correct the same from my own Minutes.
>
> In this respect, therefore, the Copy, presented to Her Majesty's Government, differs from that forwarded under the care of Mr. Upham, junior, to the Government of The United States.

The most striking difference between the work of Hornby and the American "Report of Decisions" is that in the journal printed in the former are recorded more than one hundred meetings of the Commissioners which are not mentioned in the latter; so the total number of sessions held was perhaps 253 instead of 132, as shown by the journal transmitted to this Government [4] (see Moore, International Arbitrations, I, 406–7). The docket of the Commission, which, as will be seen, is incomplete, is essentially the same in both books; correspondence of the Commission is less fully printed in the American volume (pp. 455–61) than in the British (pp. 14–38); in Hornby are a dozen opinions of the British Commissioner which are not otherwise available; but there are various opinions and arguments of counsel in the

[1] This record was by no means as carefully and accurately prepared as it should have been.

[2] Lord Clarendon wrote in an instruction of March 16, 1855 (D.S., 32 Notes from the British Legation), that he proposed "to lay before Parliament a portion if not the whole of Mr Hornby's Report"; but no record has been found showing that this was done.

[3] There is a copy of this volume in the Law Library of Columbia University and a photostatic copy thereof in the Library of Congress.

[4] The exact count is uncertain; Hornby (pp. 11, 39) reports five meetings prior to September 22, 1853; his record for four of these (p. 29) is erroneous on its face, giving one meeting twice; various dates which include a Sunday are grouped (pp. 41, 45, 60); and two other dates stated fell on Sundays (pp. 40, 75; September 25, 1853, and August 20, 1854).

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American print which are not in Hornby; and there are other variances not of sufficient importance to be enumerated. The volume of Hornby has a table of contents but no index; and its list of errata (p. x) is incomplete.[1]

A notice to claimants, with the text of the convention, was published in the London Gazette of August 23, 1853. On September 2, 1853, the Commissioner of the United States wrote to the Secretary of State enclosing a copy of that issue of the Gazette and suggesting that a notice be published in the United States.[2] Alternative forms of notice, with and without the text of the convention, were transmitted; the latter was chosen and was sent on September 19, 1853, to the Daily Union for publication (Claims Papers, envelope 9, folders 1 and 3). On October 7, 1853, the Commissioner of the United States wrote to the Secretary of State enclosing a copy of another notice to claimants which had appeared in the London Times of September 21. This was dated at the Foreign Office September 19 and gave notice of the holding of the first meeting of the Commissioners on September 15 and of the time within which claims were required to be presented (Claims Papers, envelope 9, folder 4). On March 17, 1854, the American Agent wrote to the Secretary of State that some persons believed that the Commission, after meeting in London, would adjourn to sit in the United States, and suggested that "the people of our country" be informed that the sessions would be held only in London and that under Article 3 of the convention no claim could be received after June 15, 1854. Accordingly, a notice in the desired sense, dated at the Department of State March 31, 1854, was prepared, and the publishers of the laws of the United States in Boston, New York, Philadelphia, Baltimore, Charleston, and New Orleans were requested to give it three insertions (*ibid.*, folder 2).

According to the docket, there were 115 cases before the Commission; but that record is not complete. Among the British claims were those which collectively were known as the "New York Customhouse Cases". In Report of Decisions, 334–38, is the opinion of the American Commissioner in one such case (No. 45), which was dismissed; six others were holden to be governed by that decision (Nos. 13, 69, 68, 47, 35, and 67; see *ibid.*, 338); one more docketed case of the same group should have been there mentioned (No. 46; see *ibid.*, 41, 70). Besides these eight docketed cases, there were eight others of the same nature; all sixteen were presented to the Commission on March 15, 1854, the names of the eight undocketed claimants being given as James Buckley, Arnon Buckley, James Mallalieu, Francis S. Buckley, John Platt, Joseph Wrigley, Charles Clifton, and Amon Schofield (see *ibid.*, 26–27). The American Agent, in a letter to the Secretary of State dated April 7, 1854, describing this group of cases,

[1] For example, p. 396, the name; p. 482, the dollars total; p. 86, omission from the entry for January 9, 1855 (cf. Report of Decisions, 47).

[2] The formal determination of the Commissioners regarding notices to claimants is set forth in the journal entry of September 15, 1853, the day of their first official meeting (see Report of Decisions, 15).

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gives a list of the claimants, which, while incomplete, includes the eight undocketed names (Claims Papers, envelope 8, folder 1); and in another letter, of December 11, 1854, the Agent wrote (*ibid.*): "Three of these cases [1] were argued on behalf of the claimants by two eminent Counsel, and the Agent of the United States was heard in reply. After deliberation, the commissioners agreed, but for different reasons, to reject these claims, and indicated that the others if brought up would receive the same decision"; and with that letter there were returned to the Department of State transcripts of records of thirteen forfeiture cases in the United States District Court for the Eastern District of Pennsylvania in which five of the undocketed and one of the docketed claimants had been parties (*ibid.*). All sixteen cases are to be regarded as having been dismissed by the Commission.

Then, too, there was the American claim in the case of the *Popmunett*, which is undocketed. The relevant papers are described above in the footnote to the mention of the case in the memorandum transmitted from London with the despatch of February 18, 1853. The Commissioners reported that the Agents of the two Governments had submitted all claims of the period prescribed by the convention which had been presented to either Government by the other (Report of Decisions, 5). There can be little doubt that this case was formally before the Commission and was dismissed.

Another undocketed American claim which seems to have been before the Commission was that of Captain Lorin Larkin in the case of the schooner *Merchant of New York*. The American Agent wrote to the Secretary of State under date of June 6, 1854, acknowledging papers supporting the claim and stating that it had "been duly presented to the Commissioners, and will be heard in its order" (Claims Papers, envelope 9, folder 7). While the papers sent to London in support of the claim are now lacking, it appears to have been based on the detention of the schooner in 1845 by a British vessel of war off the west coast of Africa upon suspicion that the schooner was a slaver (see the letters of John O. Robinson of April 13 and May 17, 1854, respectively in D.S., Miscellaneous Letters, April and May 1854; also D.S., 42 Domestic Letters, 370–71, 455–56, letters of Secretary of State Marcy to Robinson of April 17 and May 20, 1854, and to Thomas of May 20, 1854). In the official records of the Commission there is no mention of this case; doubtless the claim was dismissed.

Of the 40 docketed American claims against Great Britain, 1 was withdrawn, 27 were dismissed (23 by the Commissioners and 4 by the Umpire), and 12 were allowed (2 by the Commissioners and 10 by the Umpire). Of the 75 docketed British claims against the United States, 4 were withdrawn, 52 were dismissed (44 by the Commissioners and 8 by the Umpire), and 19 were allowed (9 by the Commissioners and 10 by the Umpire). Thus, of the 115 docketed claims, 5 were withdrawn, 67 were dismissed by the Commissioners, 12 were dis-

[1] Nos. 13, 45, and 46; see Report of Decisions, 41, November 1, 4, and 13. 1854.

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missed by the Umpire,[1] 11 were allowed by the Commissioners, and 20 were allowed by the Umpire. In 11 of the cases in which awards were made by the Umpire (4 American and 7 British claims) there were before him only questions of the amount of damages or of interest.[2]

According to the official recapitulations, the awards in favor of American claims (in 12 cases) against the British Government totaled $329,734.18, and in favor of British claims (in 19 cases) against the Government of the United States, $277,102.88. All awards were rendered as of January 15, 1855, the date of termination of the Commission;[3] and the matter of interest to that date (or no interest) was taken into account in fixing the amounts;[4] in four cases interest was a point specifically referred to the Umpire and decided by him (Record of Proceedings, 173, 179, 187–90; Report of Decisions, 328–33, 427–35; Hornby, 216–25, 245–46).

One result of the convention is not fully disclosed by the records of the Commission. American claim No. 35, Charles Barry and others, agents for a number of claimants, was for the return of duties levied on woolens in contravention of the treaty of July 3, 1815 (Document 35, extended by Article 4 of Document 40 and by Document 57; see also Document 117 and the editorial notes thereto). After presentation

[1] The record is not wholly consistent. British claim No. 68 was dismissed by the Commissioners but is said at one place to have been dismissed by the Umpire (see Record of Proceedings, 105, 107, 167; Report of Decisions, 47, 75, 338).

[2] The cases adjudged by the Umpire were 32; of these, 14 were American claims which on the docket were Nos. 1 (amount), 3 (amount), 5 (amount and interest), 7 (dismissed), 8, 12, 17 (interest), 18 (dismissed), 19, 26, 27 (dismissed), 30, 31, and 34 (dismissed); the 18 British claims were docketed as Nos. 4 (amount and interest), 5 (amount), 8 (amount), 14 (dismissed), 15 (dismissed), 16 (dismissed), 20 (interest), 21 (dismissed), 22 (amount), 27 (amount), 30, 31 (dismissed), 33 (dismissed), 34, 39 (amount), 40 (dismissed), 41, and 48 (dismissed).

[3] Although declared "to be regarded as bearing date from the 13th of January, 1855" (see Report of Decisions, 77).

[4] For example, in British claim No. 65, for refund of duties on cotton goods, the Commissioners made a substantial award but did not allow interest (see Report of Decisions, 311–13).

In respect of the rate of interest there were divergent views. The case of McCalmont, Greaves & Company (British claim No. 30) arose from events in Mexico in 1847 (Report of Decisions, 339–50); the American Commissioner would have disallowed the claim; the Umpire allowed $11,733.58 but no interest; the British Commissioner would have allowed $18,877.87, with interest, and on the question of the rate wrote thus (Hornby, 405, footnote):

> I have always been of opinion that a uniform rate of interest should be allowed to the claimants of both countries when the circumstances justify the allowance of any interest. My colleague, however, and the umpire think differently. They are of opinion that the legal rate of interest prevailing in the country of each claimant should be allowed. The effect, however, of this determination, is to award interest to British claimants—no matter where resident, or where they were about to employ the money of which they may have been deprived—at the rate of five per cent., and to American claimants of at least six per cent. I am therefore compelled, although against my will, in cases like the present (as a matter of form because the decision of the umpire, so far as regards British claimants, is against me), to award interest at the rate prevailing in the country where the money would have been used.

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and hearing, the claim was withdrawn on January 13, 1855, as a settlement had been effected with the British Government. That settlement involved £22,051 7s. 11d., which was paid by the Receiver General of Customs to Baring Brothers & Company, bankers of the United States, who reported receipt under date of February 2, 1855 (see D.S., 16 Instructions, Great Britain, 360–61, July 2, 1855).

A list of the docketed claims, giving their numbers, a summary statement of the nature of each, the amount or value demanded (so far as available), and the result before the Commission, follows:

AMERICAN CLAIMS AGAINST GREAT BRITAIN

1. Nathaniel L. Rogers & Brothers, of Salem, Massachusetts. For $9,565.63, with interest, for loss sustained in consequence of the assessment of customs dues upon 18,646 gallons of New England rum imported into the Bay of Islands, New Zealand, in September and October 1840 and March 1841, subsequent to the cession of sovereignty to Great Britain by the Treaty of Waitangi [1] of February 5–6, 1840, but prior to the act of New Zealand levying duties, effective July 1, 1841. This was not a claim for refund of duties paid.

Referred to the Umpire as to the amount of damages to be awarded. The Umpire awarded $7,676.96.

2. The *Fidelity*. Thomas Tyson, of Montgomery County, Maryland, owner, for $11,006.66, including interest, for losses, damages, demurrage, and expenses arising from the detention of the schooner *Fidelity*, James H. Cock, master, from July 7 to August 18, 1825, by the collector of Sierra Leone pending the trial of the vessel on a charge of having smuggled goods on a previous voyage, the trial resulting in a decree of restitution.

The claim was disallowed by the Commissioners, the vessel having been discharged after a brief detention and it appearing that there existed probable cause of seizure.

3. The *Jones*. Putnam J. Farnham, of Salem, Massachusetts, and Jed Frye, of New York, composing the firm of P. J. Farnham & Company, for themselves as owners of the vessel and cargo, for $69,800 and interest, making about $140,000; Farnham and Frye for James Gilbert, master, for $1,914.75 for losses and expenses, with interest; and Ebenezer Symonds, Danforth Symonds, Ebenezer K. Lakemen, Francis Choate, and Jonathan Peirce, of Salem, Massachusetts, for $453.46 for loss of goods and interest.

The bark *Jones* was boarded in the harbor of St. Helena September 12, 1840, by Lieutenant Edward Littlehales, of H.B.M. brig *Dolphin*, on suspicion of being engaged in the slave trade, and taken to Sierra Leone for trial. The vessel was libeled before the Vice Admiralty Court at Sierra Leone October 15, 1840, and on November 18 was acquitted, but with an assessment of costs against the vessel. An

[1] Text in 29 British and Foreign State Papers, 1111–12.

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appeal was entered by the captors. The vessel and cargo were sold, and the proceeds, amounting to £1,635 3s. 7d., besides twelve bags of coin, were paid into the registry of the court.

The American Commissioner would have awarded (including compound interest):

P. J. Farnham & Company	$164, 277. 78
James Gilbert	2, 265. 10
Ebenezer Symonds *et al*	1, 025. 22

The British Commissioner would have awarded £6,184 3s. 7d., plus the bags of coin and specie (the value of which does not appear).

The Umpire awarded the following sums:

To the owners of the *Jones* or their legal representatives	$96, 720. 00
To Francis W. Sexton, the supercargo	1, 200. 00
To James Gilbert, the master	1, 863. 00
To Ebenezer Symonds, the mate	842. 00
Total	$100, 625. 00

4. The *Cyrus*. Peter C. Dumas, of New Orleans, master and owner, for $22,984, with interest at 6 percent from June 2, 1844, in consequence of seizure and deprivation of vessel, and for $25,000 for loss of business. The vessel was boarded June 2, 1844, at Kabinda, on the west coast of Africa, by Commander William Bosanquet, of H.B.M. brig of war *Alert*, and was abandoned by Dumas. The brig *Cyrus* was seized and detained on a charge of being concerned in the slave trade.

Disallowed by the Commissioners.

5. The *John*. Reuben Shapley, of Portsmouth, New Hampshire, and others, for $9,076.10 and interest, for the loss of the schooner *John* and cargo. While on a voyage from Matanzas, Cuba, to Portsmouth, the *John*, Michael Beck, master, was captured on March 5, 1815, by Lieutenant John Mawdesley, Acting Commander of H.B.M. ship of war *Talbot;* this was after the going into force of the Treaty of Ghent on February 17, 1815, and in a latitude where vessels taken more than twelve days thereafter were to be "restored"; a prize crew was put on board the *John*, and she was taken in tow for Jamaica. On March 13 the schooner ran aground and was wrecked. The owners lost a suit in Admiralty against Lieutenant Mawdesley on the ground that he had not received notice of the conclusion of peace and so was not personally liable.

The Commissioners differed as to the amount to be allowed and also on the question of interest. The Umpire awarded the sum of $13,608.22, including interest.

6. The *Levin Lank*. James Sullivan, for loss sustained in consequence of the seizure of the schooner *Levin Lank* and her condemnation at St. Helena on the charge of being concerned in the slave trade. The *Levin Lank* had been sold by her master and lessee to foreign

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owners on the coast of Africa prior to the seizure and condemnation. The claim was presented by the original owner.

Disallowed by the Commissioners.

7. The *Volusia.* John W. Disney, master, and John Graham, attorney for William Stephenson Maris, of Santa Barbara, California, for $52,015. The brigantine *Volusia* was seized off the Congo on July 2, 1850, on the charge of being concerned in the slave trade and for having false papers, by the British vessel of war *Rattler.*

The claim was referred to the Umpire, who disallowed it on the grounds that the vessel, while by her papers the property of a citizen of the United States, was of Brazilian ownership and engaged in a trade prohibited by the laws of Brazil.

8. The *Only Son.* Benjamin Delano and James Fuller, of Kingston, Massachusetts, owners of the schooner *Only Son* and cargo, for return of duty ($1,000) and for losses and damages ($1,100) sustained in consequence of being compelled by the collector of customs at Halifax, Nova Scotia, in September 1822, to enter their cargo at that port and to pay duty thereon, although the master desired to report the vessel and proceed to another market.

The claim was referred to the Umpire, who reported that the master contemplated proceeding to a port in the United States and awarded $1,000.

9. The *Amelia.* Robert Roberts, owner (apparently through a mortgage and assignment from Lewis Taveira Douttel) of the ship *Amelia,* Douttel master, for $30,440.

The *Amelia,* while on a voyage from Puerto Rico to Guadaloupe, was captured on February 11, 1815, by H.B.M. brig of war *Spider,* taken into Antigua, and condemned.

The claim was disallowed by the Commissioners, as the date of capture was prior to the ratification of the Treaty of Ghent.

10. John McClure and others. For the value of certain slaves alleged to have been owned by citizens of the United States in Florida while that territory belonged to Spain and which escaped from Florida to Cumberland Island and were taken away by British authorities at the close of the War of 1812.

Disallowed by the Commissioners on the ground of lack of jurisdiction and also of an adjustment under the conventions of 1822 and 1826 (Documents 44 and 53). It seems that this claim is the same as No. 41 under those conventions, for which an award of $6,630 was made.

11. James Young, of Norfolk, Virginia. For £413 2s. 1d., the proceeds of five slaves captured on board the schooner *Wilhelmina* by a British national vessel during the War of 1812, carried to Jamaica, and condemned as being the property of enemies.

Disallowed by the Commissioners.

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12. The *Creole*. For the facts in the case of the brig *Creole*, see volume 4 of this edition, pages 457–69, and the writings there cited. The claims were the following:

Edward Lockett, for twenty-five slaves	$20,000 and interest
James Pemberton, liquidator of the Merchants' Insurance Company of New Orleans, for loss paid on thirty-two slaves	23,733 and interest
John Hagan, for nine slaves	6,500 and interest
James Andrews, for eight slaves belonging to Andrews & Hatcher	3,300 and interest
William H. Goodwin, for twenty-six slaves shipped by him and Thomas McCargo	20,800 and interest
P. Rotchford, for three slaves	1,200 and interest
G. H. Apperson and Sherman Johnson, for twenty-three slaves	(amount not of record)

The Commissioners disagreed on the merits, and the case went to the Umpire, who awarded:

Edward Lockett	$22,250.00
James Pemberton, liquidator of the Merchants' Insurance Company of New Orleans (first claim)	12,460.00
James Pemberton, liquidator of the Merchants' Insurance Company of New Orleans (second claim)	16,000.00
John Hagan	8,000.00
James Andrews	5,874.00
William H. Goodwin, for himself and Thomas McCargo	23,140.00
P. Rotchford	2,136.00
G. H. Apperson and Sherman Johnson	20,470.00
Total	$110,330.00

13. The *John A. Robb*. This vessel, Herman Ordeman, master, was boarded off the port of Kabinda, on the west coast of Africa, on or about March 27, 1842, by Lieutenant H. J. Matson, of H.B.M. brig *Water Witch*. Ordeman alleged that the British officer removed a sailor, Peter Hutchinson, from his vessel.

The Commissioners disallowed the claim, it appearing that the sailor left the vessel with the master's consent.

14. The *Maria Dolores*. William Taggart and others, owners of the *Maria Dolores*, for the proceeds of the sale of the vessel and cargo by British colonial authorities after the vessel had been brought into the Barbados by a Bolivian (or Brazilian) privateer. No dates or other circumstances are of record. The "claimant" was said to be a citizen of the United States.

Held by the Commissioners not to be within their jurisdiction.

15. The *Douglas*. A. A. Frazier, for himself and for Alvin Baker, owners of the brig *Douglas*, of Duxbury, Massachusetts, Baker, master, for $5,000 direct damages and "near" $15,000 indirect damages, for losses arising from the seizure on October 21, 1839, and detention (for eight days) of the *Douglas* by H.B.M. brigantine *Termagant*, Lieutenant H. F. Seagram commanding.

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The following is from Hornby, 70–71, July 22, 1854:

The Commissioners conferred together on the case of the brig "Douglas," Mr. Hornby being willing, as the British Government had offered to pay damages, if the case were pressed by The United States, to give six hundred dollars, but refused to give more, as it was clear, from the evidence, that the "Douglas" was engaged in the Slave Trade.

Mr. Upham thought they were entitled to what they asked.

The Commissioners awarded $600.

16. The *Caroline Knight.* George W. Knight and Benjamin P. Lunt, of Newburyport, Massachusetts, for losses growing out of the seizure of the schooner *Caroline Knight*, Benjamin Small, master, by the British steam sloop *Devastation* on September 11, 1852, and the subsequent sale thereof at Prince Edward Island in 1852.

The vessel was seized within the three-mile limit while proceeding for Cascumpeque Harbor, although (as alleged) no fishing had taken place within the said limit. In the proceedings in court the claimants allowed judgment by default, supposing that they would be able to repurchase the vessel for a small sum.

The vessel was sold at public auction; it appears that the highest bid made by a private individual was £1,110; that the Public Treasurer of the island ran the price up to £1,500; and that Knight was obliged to pay £1,505 to make the purchase.

The Commissioners awarded the difference between the first two bids mentioned, or $1,887.60 (£390 at $4.84).

17. The *Tigris* and *Seamew.* Robert Brookhouse and William Hunt for themselves and as agents of Joseph H. Hanson, Robert Brookhouse, Jr., James Briant, and José de Freitas, for $28,702.44 damages arising out of the seizure of the vessels *Tigris* and *Seamew.*

The brig *Tigris*, Nathan A. Frye, master, was seized October 7, 1840, at Ambriz, by Lieutenant H. J. Matson, of the *Water Witch*, a prize crew was put on board, and the vessel was taken to Salem, Massachusetts. She was in possession of the prize crew until December 29, 1840, or for 84 days.

The ship *Seamew*, James Briant, master, was seized October 27, 1840, by Commander William Henry Quin, of H.B.M. sloop *Persian*, at Ambriz, taken to Sierra Leone and St. Helena, and redelivered on January 16, 1841. The master returned her to Ambriz, arriving February 28, 1841, a loss of 125 days.

Liability in these cases had been admitted by the British Government.

The Commissioners awarded £4,000 damages but disagreed on the question of interest.

The Umpire awarded interest at 3 percent from January 15, 1847, to January 15, 1855, amounting to £960, making the total award £4,960, or $24,006.40.

18. The *Pallas.* Edward Haskell and others, for $2,000. The schooner *Pallas*, of Rockport, Massachusetts, Edward Haskell,

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master and part owner, was seized August 4, 1840, near the Magdalen Islands, by the cutter *John and Louisa Wallis*, and carried into Sydney, Nova Scotia. After a detention of one month and ten days the vessel was cleared; it was said that there was some damage to the schooner and that the fishing voyage was broken up.

The Commissioners disagreed on the merits, and the claim was disallowed by the Umpire for want of evidence.

19. The *Argus*. John and Josiah Sterling, of Portland, Maine, owners of the fishing schooner *Argus*, William Doughty, master. The *Argus* was seized on St. Ann's Bank, August 6, 1844, by the revenue cutter *Sylph*, of Lunenburg, Nova Scotia, on the charge of fishing within three miles of a line drawn from headland to headland on the northeast coast of Cape Breton Island, Nova Scotia. Vessel and catch were carried into Sydney and sold.

This was one of the "Fishery Cases" involving the construction of Article 1 of the convention of October 20, 1818 (Document 40).

The Commissioners disagreed (see Hornby, 302–27), and the Umpire awarded $2,000.

20. The *Julius and Edward*. Johannes Heineken, of Bremen, as counselor of Charles Tyng, of Norfolk, Virginia, for $132,809 and interest.

According to statements made, in 1840 Charles Tyng chartered the Bremen bark *Julius and Edward*, Captain Ratje Siedenburg, to convey a cargo of merchandise from Habana to Kabenda on the coast of Guinea. The vessel was seized by the British cruiser *Persian* on suspicion of being fitted out for the slave trade, taken to Bremerhaven, and unloaded. The vessel was discharged in the criminal court, and the superior court of Bremen decided on April 15, 1842, that the vessel and cargo should be left at the disposal of the owners, reserving their claims for costs and damages against the British Government. The British Government made an agreement with the owner of the vessel, her master and crew, but not with the alleged affreighter, taking the view that he was not the real affreighter.

It was stated that most of the cargo spoiled during the long detention and that the claimant was put to heavy expenses.

No evidence was submitted, and the claim was dismissed by the Commissioners.

21. The *Hero*. James B. McConnell, master of the schooner *Hero*, for damages growing out of the seizure of the vessel by the commander of the British brig *Lynx*. The *Hero*, on a voyage from Habana to Whydah, Africa, was seized on August 9, 1840. It is said that a prize crew was put on board and that the commander of the *Lynx* later released the *Hero*, which proceeded to Whydah. There was allegation of some damage to the cargo.

Disallowed by the Commissioners.

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22. The *Charlotte.* Hart Sands, Egbert K. Van Beuren, and B. Aymar & Company, for £5,546 15s. 11d., damages and expenses arising out of the attachment of the brig *Charlotte,* of New York, in the Irish Court of Admiralty, in the port of Newry, in 1824, and the refusal of the court to allow costs or damages, although the suit of the attaching party was dismissed and the vessel was ordered restored to the American owners.

Disallowed by the Commissioners on the ground of its being a controversy between private individuals, settled by a competent court within whose jurisdiction the property was.

23. Henry H. Schieffelin. Jacob Schieffelin and Henry H. Schieffelin, for losses growing out of the seizure, prior to the War of 1812, of a cargo of sugar in the ship *Brunswick,* Coffin, master. It was alleged that the Court of Admiralty, by a decree of November 17, 1810, ordered the cargo restored or paid for, but that the Court of Appeal on December 15, 1813, ordered condemnation, as good and lawful prize taken prior to hostilities, belonging at the time of seizure to subjects of the United States and now enemies.

Disallowed by the Commissioners for want of jurisdiction.

24. The *Washington.* John Redding, Asa Blaney, and Joseph Glass (the names are variously written), owners of the schooner *Washington,* of Marblehead, Massachusetts, Redding, master, for the seizure and condemnation of the vessel and cargo in 1818. It appears that the schooner put into Liscomb Harbor, Nova Scotia, for water; that she was seized by the British ship of war *Saracen* on July 12, 1818; and that she was condemned for a breach of the revenue laws by the Court of Vice Admiralty, the judge deciding that the entry into Liscomb Harbor was an importation within the meaning of the statute. The amount claimed, as stated in January 1854, was $13,060.30, including interest for thirty-five years.

Disallowed by the Commissioners because of incomplete evidence.

25. The *Joseph Cowperthwait.* William S. Smith and Joseph L. Nobre, of Philadelphia, for losses growing out of the detention of the brig *Joseph Cowperthwait,* Joseph Sturdevant, master, for six hours on April 4, 1844, by Governor H. W. Hill, of Cape Coast Castle, Africa, on suspicion of being engaged in the slave trade.

Dismissed by the Commissioners for lack of evidence.

26. The *Washington.* Charles Currier for $4,121 ($2,483 for vessel, damages, etc., and $1,638 for eleven years' interest) for losses consequent upon the seizure and condemnation of the schooner *Washington.* The vessel was seized by the British revenue schooner *Julia,* Commander Joseph W. E. Darby, on May 10, 1843, while fishing in the Bay of Fundy, some ten miles from shore, off Annapolis, Nova Scotia, was taken into Yarmouth, and was condemned by the Court of Vice Admiralty at Halifax.

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This was another of the "Fishery Cases" on which the Commissioners disagreed (see claim No. 19).

The Umpire awarded $3,000.

27. The *Director.* Joshua G. Dennen, son of Job Dennen, owner of the fishing schooner *Director,* for the seizure of the vessel off the northern shore of Cape Breton Island on September 18, 1840, by Captain Andrew Stevens, of the provincial cutter *John and Louisa Wallis.* The testimony of some of the affiants assigned no cause of seizure, which was perhaps for fishing within the three-mile limit; from one of the statements it would seem that the vessel was seized on the charge of smuggling. No account of the fate of the vessel appears.

This was deemed another of the "Fishery Cases" on which the Commissioners disagreed (see claim No. 19); in this case the British Commissioner thought also that evidence was lacking (Hornby, 302).

The Umpire, after reviewing the testimony, held that the evidence was insufficient to establish a claim.

28. George W. Atwood. George Washington Atwood for £200,000. Claimant chartered the British cutter *Louisa* to carry freight and passengers from England to California. Controversies having arisen between Atwood and the captain, crew, and passengers, at or near Desterro, Brazil, all parties requested the assistance of the British Chargé d'Affaires at Rio de Janeiro. Lieutenant J. W. Tomlinson, of H.B.M. packet schooner *Spider,* was sent to investigate, and the *Louisa* was brought to Rio de Janeiro on November 23, 1849, where the parties agreed to submit the case to arbitration. The arbitrators held that Atwood's case was not proved and awarded damages to the passengers, instructing the British Consul to sell the *Louisa* for this purpose if Atwood defaulted.

The claimant stated that the action of the British authorities was the cause of death of his wife and other relatives by pestilence and of his being cast ashore penniless, deprived of his property and effects.

Disallowed by the Commissioners.

29. William Cook, *et al.* William Cook and others, avowing themselves to be the heirs of Mrs. Frances Mary Shard and as such entitled to her property and effects, the proceeds of which were alleged to have gone into the British Treasury.

Dismissed by the Commissioners for want of jurisdiction, the claim not being included within the terms of the convention.

30. The *Enterprize.* The Augusta Insurance and Banking Company for $12,786.94 and the Charleston Fire and Marine Insurance Company for $23,011.50, for insurance losses paid on seventy-two slaves shipped on board the brig *Enterprize,* Elliott Smith, master, by Joseph W. Neal, Oliver Simpson, and others.

The brig sailed from Alexandria, Virginia, bound for Charleston, and on February 11, 1835, after encountering head winds and gales,

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put into the port of Hamilton, Bermuda, for provisions and water. Following a writ of habeas corpus, issued by the Chief Justice, the seventy-eight slaves who were on board were brought before him and were then declared free persons; only six slaves returned to the vessel.

The Commissioners disagreed. The Umpire awarded the Augusta Insurance and Banking Company $16,000 and the Charleston Marine Insurance Company $33,000.

31. The *Hermosa*. The Louisiana State Marine and Fire Insurance Company of New Orleans and the New Orleans Insurance Company for insurance losses paid to Henry Nicholas Templeman on thirty-eight slaves shipped from Richmond, Virginia, to New Orleans on the schooner *Hermosa*, John S. Chattin, master.

The *Hermosa* was wrecked on a reef near the Spanish Key, Abaco, on October 19, 1840. The slaves were taken on board a wrecker and carried to Nassau, New Providence, where they arrived October 22, 1840, and were set at liberty by the local authorities despite the protests of the master and the United States Consul.

The Commissioners disagreed. The Umpire awarded $8,000 to each company, or $16,000 in all.

32. The *Brookline*. John W. Bass, owner of the brig *Brookline*, of Eastport, Maine, Ambrose C. Spates, master, for $2,000 for loss of time consequent on the impressment of a seaman. The *Brookline* was boarded August 3, 1847, by the British steam frigate *Columbia* between Head Harbor Island and Ship Head, Campobello, New Brunswick, and a seaman called John Kingston was removed. The seaman was a British subject whose real name was Robert Moore and who had deserted from the *Columbia* on July 23, 1847.

Disallowed by the Commissioners.

33. The *Evelina*. G. W. Livingston & Company, of New York, owners of the brig *Evelina*, William Abbot, master, for £500 4s. 6d. with interest from June 5, 1833, for damages suffered in consequence of a collision on May 21, 1833, with the British ship of war *Winchester*, Captain William Wellesley, in the English Channel.

Disallowed by the Commissioners.

34. The *Lawrence*. The owners of the brig *Lawrence*, of New Orleans, Edward A. Yorke, master, growing out of the seizure of the *Lawrence* at Freetown, Sierra Leone, on September 25, 1848. The vessel and cargo were libeled in the Vice Admiralty Court for being found in a British port, equipped for the slave trade, and were condemned.

The Commissioners disagreed. The Umpire disallowed the claim on the grounds that the vessel was a slaver and that the slave trade was prohibited by the law of nations and by the laws of the United States.

35. Duties on woolen goods. Charles Barry, William Frost, and others, agents. For return of duties levied on woolen goods by the

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British Government beyond those paid by citizens of other nations contrary to the convention of 1815 between the United States and Great Britain (Document 35; see Document 117).

The agent for these claims, Charles Barry, notified the Commissioners that he had effected a settlement with the British Government, and the claims were withdrawn.

Baring Brothers & Company informed the Department of State under date of February 2, 1855, that they had placed to the credit of this Government £22,051 7s. 11d., paid to them by the Receiver General of Customs, being the amount of the settlement effected.

36. The *Cicero.* Stephen Kingston, of Philadelphia, for losses and expenses incurred by the seizure and detention of his ship *Cicero* at Limerick in the year 1809 for an alleged fraud upon the revenue. The vessel was acquitted at the trial, but the court having certified that there was probable cause for seizure, claimant was by law precluded from demanding any indemnity, and he could, by suit, have recovered only nominal damages, without costs.

Dismissed by the Commissioners as not within the jurisdiction of the Commission.

37. The *Jubilee.* The filing of a claim under this heading seems to have arisen from a misreading of an allusion by Albert Gallatin to an English case, the *Jubilee*, involving salvage, which was decided by Lord Stowell (see D.S., 33 Despatches, Great Britain, No. 45, December 28, 1826, and enclosure).

No evidence was submitted, and the claim was dismissed by the Commissioners.

38. The *Robert.* Gilman, Smull & Company, of New York, for the seizure and detention of the brig *Robert*, Albert Cook, master, at Freetown, Sierra Leone, in the month of April 1843, on the charge of having goods on board which were not declared to the collector of customs.

Dismissed by the Commissioners.

39. The *Elvira.* The nature of the case does not appear. No evidence was submitted.

Dismissed by the Commissioners.

40. The *Olive Branch.* Ira Allen, of Vermont, for losses growing out of the capture of the ship *Olive Branch*, William Bryant, master, by the British ship of war *Audacious*, Captain Davidge Gould, in 1796. From the papers, the story seems to be this:

Allen purchased cannon and muskets from the French Government for the Vermont Militia; these were shipped from Ostend to New York on the *Olive Branch;* the vessel was seized because the cargo consisted of arms and military stores and was carried into Portsmouth; prolonged legal proceedings were had which resulted in a decree of restoration of the cargo to Allen on payment of the captor's

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expenses; but the property meantime had been released on bond and turned over to the firm of Bird, Savage & Bird as security; and that firm had failed after obtaining possession and having sold it.

The papers now on file are extensive, although according to the docket no evidence was submitted; the claim was dismissed by the Commissioners; it was clearly without their jurisdiction.

BRITISH CLAIMS AGAINST THE UNITED STATES

1. William McGlinchy (or McGlinckey), Parish of Madawaska, County of Carleton, New Brunswick. For compensation for the seizure of money and promissory notes, of a value of about $775, by United States customs officer Madigan at Fish River on July 12, 1845. The claimant, a licensed peddler, was at the time proceeding in a canoe up the River St. John on the American side. Goods of the value of £75 had also been taken but returned.

Evidence having been submitted of the return and acceptance of the property seized, the claim was dismissed by the Commissioners.

2. Thomas Rider. For compensation for loss and injury sustained in consequence of having been arrested by the United States military authorities at Matamoros, Mexico, December 15, 1846, and having been detained five and one-half months. The Commissioners awarded $625.

3. The *Joseph Albino.* William Allen, owner of the brig *Joseph Albino,* Thomas Allen, master, for the seizure and detention of the vessel by the customhouse authorities at San Francisco, December 10, 1849, on the charge of violating the United States revenue laws by smuggling.

Duties were paid on the cargo as it appeared on the manifest, with the exception of certain items which the master averred had been landed at Honolulu, and the vessel obtained her clearance about December 1, 1849. It was subsequently discovered that the master had smuggled ashore merchandise not on the manifest and also that stated to have been landed at Honolulu, the value of which amounted in the aggregate to about $1,500. The master admitted the charge and left the country, abandoning the vessel and taking with him the register and all other papers. On October 11, 1850, it was reported that the vessel was still at San Francisco and in good condition.

Disallowed by the Commissioners.

4. The *Frances and Eliza.* Charles Herring and Christopher Richardson, owners of the ship *Frances and Eliza,* William Coates, master, for $32,769.20 for the seizure of the vessel at New Orleans in 1819 and the sale thereof under a judgment of the United States District Court, which was subsequently reversed by the Supreme Court of the United States (see House Document No. 64, 23d Congress, 1st session, serial 255).

The Commissioners disagreed as to the damages. The Umpire awarded $34,227, including interest to January 15, 1855.

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5. The *Albion*. John Lidgett, owner of the ship *Albion*, for seizure of the vessel by United States revenue officers in April 1850 for cutting timber and for trading with the Indians in the Oregon Territory without license. Application was made to the United States Government requesting release of the vessel as an act of clemency. That request was answered January 11, 1851, by the Secretary of the Treasury, who granted release provided there had been no legal condemnation. The vessel had, however, been condemned and sold in the fall of 1850.

The Commissioners disagreed as to the damages. The Umpire awarded $20,000.

6. Loback & Company. For the seizure of logwood at Tabasco by American seamen during the Mexican War.

Disallowed by the Commissioners.

7. Hudson's Bay Company. For exemption from taxes on livestock in Oregon and repayment of duties collected thereon.

Withdrawn.

8. Hudson's Bay Company. For the seizure of the steamer *Beaver* and detention from December 28, 1851, to January 24, 1852, at Olympia, Oregon (now Washington), on the charge of having violated the United States revenue laws.

The Commissioners disagreed as to the damages. The Umpire awarded $1,000.

9. Hudson's Bay Company. For loss occasioned by the seizure of their schooner *Cadboro*.

Withdrawn.

10. Hudson's Bay Company. The collector of the Port of Astoria served notice on the captain of the Hudson's Bay Company steamer *Prince of Wales* to the effect that the Hudson's Bay Company was not authorized to use its steamer to carry either freight or passengers on the Columbia River, and that if it did so, the collector would seize the vessel. Thereupon the company discontinued such operations, which were interrupted from August 1850 until April 1852, when Secretary of State Webster ruled that the interpretation put upon Article 2 of the Oregon Treaty (Document 122) by the collector was erroneous. The claim of the Hudson's Bay Company was for $10,000 damages.

Disallowed by the Commissioners. The opinion of the British Commissioner was to the effect that the damages were too remote to be assessed and that the mere threat of the collector might and ought to have been disregarded (Hornby, 479–80).

11. Maurice Evans & Company. For the return of duties assessed by United States revenue officers in overvaluation of wines and porter imported at New York during the years 1850 and 1851.

Disallowed by the Commissioners.

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12. Joseph Wilson. For arrest and detention in Michigan on the charge of exercising his authority as a British land officer on an island alleged to be within the limits of the State of Michigan, but afterwards found to be within British jurisdiction.

Disallowed by the Commissioners.

13. Platt & Duncan. For the return of $7,500 alleged to have been illegally obtained as an adjustment of suits brought against them by the United States collector at New York, Jesse Hoyt, on the charge of having entered goods with false invoices.

This was one of a class of cases known as the "New York Customhouse Cases", involving together between two and three hundred thousand dollars. There appear to have been in all sixteen such cases, of which eight are numbered on the docket (Nos. 13, 35, 45, 46, 47, 67, 68, and 69). The claimants seem to have relied largely on the voluminous Poindexter Report (House Report No. 669, 27th Congress, 2d session, serial 409).

Claim disallowed by the Commissioners, as were all the other New York Customhouse Cases (see Report of Decisions, 334–38).

14. Executors of James Holford and, according to the docket, "other claimants"; but the claim seems to have been only that of the executors of Holford. For money due on bonds issued by Texas prior to its admission into the Union, for payment of which the Texas revenues were pledged, some of which (e.g., customs) became afterwards revenues of the United States.

Holford held bonds for £30,150 dated July 1, 1839, bearing interest at 10 percent and due thirty years from date if not previously paid.

The American Commissioner thought that there was no jurisdiction. The British Commissioner would have allowed the claim. The Umpire held "that this Commission cannot entertain the Claim it being for transactions with the Independent Republic of Texas prior to its Admission as a State of the United States".

15. Philip Dawson and others, of Baltimore, Maryland. For money due on bonds issued by Texas prior to admission into the United States (see claim No. 14).

The claim appears to have been put forward by the assignee in bankruptcy of Philip Dawson and Frederic Dawson, partners. Frederic Dawson was a naturalized citizen of the United States and was adjudicated bankrupt in 1843. Philip Dawson, who died before adjudication, was a British subject.

The Dawsons held a bond of the Republic of Texas for $280,000 dated November 13, 1838, due December 1, 1843, with interest at 10 percent, payable to Frederic Dawson or order.

The British Commissioner would have allowed a moiety of the principal with 10 percent interest. The American Commissioner dissented. The Umpire held that "Messrs Dawson have no right to claim before this Commission being according to the Law of Nations Citizens of the United States and not British Subjects and were they

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British Subjects the Claim being for transactions with the Independent Republic of Texas before it became a State of the United States, the Claim cannot be entertained by this Commission".

Provision for payment to the holders of Texas bonds was made by the act of February 28, 1855 (10 Statutes at Large, 617–19).

16. The *Lord Nelson.* James and William Crooks, owners. The schooner *Lord Nelson* was seized on Lake Ontario by the United States brig *Oneida,* commanded by Lieutenant M. T. Woolsey, on June 5, 1812, and thus thirteen days prior to the declaration of war, for an alleged violation of the embargo laws of the United States. It was admitted that the seizure was unjustifiable. The Commissioners agreed that there was no jurisdiction of a claim for damages for the seizure.

The vessel and cargo were sold under a decree of the District Court for the Northern District of New York, the schooner for $2,999.25, the cargo for $1,972.10, a total of $4,971.35. After deduction of certain costs and charges, the fund of $4,243.32 was turned over to Theron Rudd, the clerk of the court, who embezzled it.

On July 11, 1817, the court decreed that the capture of the *Lord Nelson* was illegal and void.

The British Commissioner would have allowed $4,971, with interest at 5 percent from April 1818, the date of the embezzlement, or a total of $13,800. The American Commissioner dissented. The Umpire held that the "period when the transaction took place, which is the foundation of this claim, places it without the jurisdiction of this Commission" (Hornby, 247–49).

The schooner at the sale had been acquired by the United States Navy and was converted into a war vessel. In 1837 the Secretary of the Navy fixed the value of the vessel at the time of capture at $5,000.

For this amount claim was made by the owners before the tribunal constituted under the special agreement between the United States and Great Britain of August 18, 1910 (37 Statutes at Large, 1625–30). Liability was admitted, and the tribunal awarded interest at 4 percent from February 3, 1819, to April 26, 1912, or a total of $23,644.38 (American and British Claims Arbitration, 37, 432–35).

17. Alfred T. Wood. For arrest in New Brunswick and removal to Maine for offenses said to have been committed in that State.

Disallowed by the Commissioners.

18. Samuel C. Johnston. For arrest and prosecution at New York on a charge of violating the Emigrant Passenger Act.[1]

Disallowed by the Commissioners.

[1] See the acts of March 2, 1819, February 22 and March 2, 1847, January 31 and May 17, 1848, and March 3, 1849 (3 Statutes at Large, 488–89; 9 *ibid.*, 127–28, 149, 210, 220–23, 399–400), repealed by the "Act to Regulate the Carriage of Passengers in Steamships and other Vessels" of March 3, 1855 (10 *ibid.*, 715–21).

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19. The *Union.* Robert Holl, for additional damages on account of the capture and destruction of the ship *Union* and cargo by the U.S. sloop of war *Peacock* in 1815 in the Indian Ocean, after the time peace was to take effect in that part of the world.

In 1819 the United States Government had paid the British Government £13,826 as compensation for this claim (see the appropriation of $61,451 in the act of March 3, 1819; 3 Statutes at Large, 502).

Disallowed by the Commissioners.

20. Great Western Steamship Company. For return of duties levied on coal entered and stored in the United States and consumed on outward-bound voyages of their steamers, for which they claimed to be entitled to drawback.

The Commissioners awarded $11,000 but disagreed on the question of interest. The Umpire awarded interest at 5 percent from June 15, 1850 to January 15, 1855, amounting (according to the judgment) to $2,500 and making the total award $13,500.

21. Heneage W. Dering and others. For sums due on bonds issued by the Territory of Florida before admission of the State of Florida into the Union.

The British Commissioner would have allowed the claim, principal and interest. The American Commissioner would have rejected it. The Umpire, while observing that the bondholders had a just claim on the State of Florida, held that liability of the United States did not exist.

22. The *James Mitchell.* Francis Ashley and others, for damages growing out of the removal of the ship *James Mitchell* to Key West, Florida, for trial as to salvage, and the sale there of vessel and cargo.

The Commissioners disagreed on the question of damages. The Umpire awarded $20,000.

23. The *Young Dixon.* Samuel Moats, for excess of tonnage duties on the vessel *Young Dixon* by the customhouse officers of Philadelphia upon her arrival from Honduras.

Disallowed by the Commissioners.

24. Francis Watson and others. For lands granted them in the Territory of New Brunswick but by adjustment and location of the boundary line included in the State of Maine.

Disallowed by the Commissioners.

25. The *Irene.* Riddell Robson, for the seizure and detention of the vessel *Irene* for violation of the Emigrant Passenger Act.

Dismissed by the Commissioners.

26. Miller and Mackintosh. William Miller, of Mazatlán, Mexico, and Robert Mackintosh, of San Francisco, for $18,000 for losses growing out of the seizure of a cargo of wines, shipped by Miller to

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Mackintosh on the bark *Abeille*, by the collector at San Francisco, December 26, 1849. It was said that the cargo was seized because carried on a foreign (French) vessel from a foreign port to San Francisco.

The Commissioners awarded $6,000.

27. The *Lady Shaw Stewart*. George Buckham, for the seizure and sale of the brig *Lady Shaw Stewart*, Roper, master, at San Francisco in 1849 by the United States authorities.

The Commissioners disagreed as to damages. The Umpire awarded $6,000.

28. Godfrey Pattison & Company, of Glasgow. For return of duties assessed under the Tariff Act of August 30, 1842 (5 Statutes at Large, 548–67), in contravention of the convention of 1815 (Document 35).

Claim No. 1. For $37,571.78 excess of duties exacted at New York ($27,316.07) and Boston ($10,255.71) upon certain goods from Glasgow and Liverpool exported after September 1, 1842, the date on which the Tariff Act was to take effect, and arriving prior to May 13, 1843, up to which time goods arriving from eastward of the Cape of Good Hope were admitted at a lower rate of duties.

Claim No. 2. For $5,610.73 excess of duties exacted at New York on goods from Glasgow exported in August and September of 1842 and imported into New York by the steamship *Great Western* in September 1842.

By the convention of 1815 and the terms of the act of 1842, the right was claimed to import at the previous lower rate of duty until the date of arrival of the last vessel from beyond Cape Horn or the Cape of Good Hope which sailed prior to September 1, 1842 (see Document 117).

The Commissioners awarded $61,689.54.

29. Baker & Company. For expulsion from Tampico, Mexico, by the forces of the United States.

Dismissed by the Commissioners.

30. Calmont (or McCalmont), Greaves & Company. For return of an excess of $18,877.87, duties levied at Veracruz during the Mexican War. The claimants ordered shipment of their goods, relying on a tariff issued by General Worth. While the goods were en route a new tariff, dated March 31, 1847, was placed in operation with higher duties. The claimants petitioned the Government of the United States, and when the goods arrived the collector agreed that they should remain in deposit pending answer to the petition. By an order of June 10 the tariff was lowered, but the claimants were obliged to pay the rates of the tariff of March 31.

The British Commissioner would have allowed the claim in full, with interest from November 22, 1847. The American Commissioner would have rejected it.

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The Umpire allowed the claim in respect of duties on certain goods, awarding $11,733.58, without interest.

31. Calmont (or McCalmont) & Company. For the seizure by Mexicans of goods belonging to them while under the convoy of United States forces, and for the return of duties paid on the goods.

The Commissioners disallowed the claim for seizure but referred to the Umpire the claim for return of duties (see Hornby, 396).

The Umpire held that the United States was in no way responsible for the loss and that the return of the duties would be merely an act of liberality; that the Commission had no power to dispense such liberality and that therefore no compensation could be awarded.

32. Cotesworth, Powell & Pryor. For lands granted them in Texas while under the Government of Mexico.

Disallowed by the Commissioners.

33. Thomas and Benjamin Laurent. For $26,000 confiscated by General Scott during the occupation of Mexico City by United States forces.

The Laurents had contracted to purchase from the Mexican Government certain Church property and had deposited the price with a banker pending the completion of the contract; but the law for the sale of the Church property was annulled before this was done. The Laurents claimed the property, but after the peace the Mexican courts sustained the right of the Church thereto.

The Laurents were British subjects who had been engaged in business as merchants in Mexico from 1829.

The Commissioners differed on the question of jurisdiction. The Umpire held that for the purposes of this Commission the Laurents were Mexican citizens and not British subjects (see Report of Decisions, 120–60).

This claim was presented as a claim of American citizens against Mexico to the Joint Commission under the convention of July 4, 1868 (15 Statutes at Large, 679–85), and was dismissed for want of jurisdiction (Senate Executive Document No. 31, 44th Congress, 2d session, serial 1720, pp. 28–29, No. 205; D.S., 2 United States–Mexico Claims Commission, 1868, p. 395).

34. The *Confidence*. The owners of the brigantine *Confidence*, for loss occasioned by the vessel's having been run down and sunk in the Strait of Gibraltar by the U.S. frigate *Constitution* on December 1, 1850.

The case was referred to the Umpire, who, having "consulted with several experienced Navigators to whom the Evidence in the Case was exhibited", held that the *Constitution* was in fault and awarded £2,055 or $9,946.20.

35. Samuel Bradbury. For the return of monies alleged to have been illegally obtained by the collector of customs of New York in

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compromise of a suit brought on a charge of having entered goods with false invoices.

This was one of the New York Customhouse Cases (see claim No. 13).

Disallowed by the Commissioners.

36. Hudson's Bay Company. For drawback of duty paid at Astoria in 1852 on goods reexported from Fort Vancouver.

The Commissioners awarded $1,523.68.

37. Hudson's Bay Company. For supplies furnished volunteers raised in Oregon on the breaking out of hostilities with the Indians, and for expenditures incurred in the rescue of captives from them prior to the organization of the Territorial Government.

The Commissioners awarded $3,182.21.

38. George Houghton. The claimant, a British merchant, was en route from the Canary Islands to Madeira in a Spanish vessel when, on May 23, 1816, it was seized by a pirate, who put most of the crew to death and plundered the vessel. The loss alleged by Houghton was £1,500 in gold and silver.

The vessel was soon afterwards taken by a United States cruiser, and the crew was tried for piracy and the vessel sold. The proceeds of the sale, in part, with half of what was found on board at the time of the seizure, went into the United States Treasury.

The claim was for such just sum as the Commissioners might deem right after deduction of salvage and expenses.

The Commissioners awarded $2,500.

39. The *Baron Renfrew.* Duncan Gibb, of Liverpool, for the seizure and detention of the *Baron Renfrew* at San Francisco on a charge of smuggling. A quantity of rice entered on the manifest as stores was smuggled on shore, and the vessel was libeled. The court condemned the rice as forfeited; assessed the captain the penalty of three times the value of the rice, which sold for $2,200, for failure to pay which he was imprisoned; and ordered the vessel delivered to the owners. The judgment is said to have been affirmed on appeal.

The vessel was seized on August 6, 1852, and the libel was dismissed on September 21, 1852.

The Commissioners disagreed as to the amount of damages. The Umpire awarded damages for detention after September 21, 1852, a period of three and one half months, and a portion of the legal expenses, in all $6,000.

40. Alexander McLeod. This claim arose from the affair of the Caroline (see volume 4 of this edition, pp. 443–57). The Commissioners disagreed on the merits. The following excerpt is from the judgment of the Umpire (Record of Proceedings, 265–66):

this Case arose out of the burning and destruction of the American Steam Boat Caroline at Schlosser in the State of New York on the Niagara River by an Armed

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Force from Canada in the year 1837 for which the British Government appears to have delayed formally answering the Claims of the United States until 1840 when the Claimant was arrested by the Authorities of the State of New York on a charge of Murder and Arson as having been one of the party which destroyed the "Caroline". The British Government then assumed the responsibility of the act as done by order of the Government Authorities in Canada and pleaded justification on the ground of urgent necessity. From this time the case of the Claimant became a political question between the two Governments, that of the United States used every means in their power to ensure the safety of the Claimant and to procure his discharge which was effected after considerable delay. It appears by the Diplomatic Correspondence that the affair of the "Caroline" the Death of Durfee who was killed in the Affray and the arrest of the Claimant were all amicably and finally settled by the Diplomatic Agents of the two Governments in 1841 & 1842.

The question in my judgment having been so settled ought not now to be brought before this Commission as a private Claim I therefore reject it.

41. Charles Uhde & Company, of Matamoros, Mexico. For $41,409.79½, losses resulting from the seizure and confiscation of merchandise by United States forces in Matamoros in 1846.

On June 30, 1846, a circular was issued allowing certain trade with that port, including the importation in American vessels of foreign goods on which duties had been paid. Uhde & Company imported certain goods from Habana in the American schooner *Star*, but paid no duties. The goods were seized by the military commander at Matamoros.

The Secretary of the Treasury examined the case and determined that the seizure was justified but ordered the restoration of the goods on payment of duty according to the tariff of 1842 and certain charges and expenses.

The claimants alleged that they were not notified of this decision and that the goods were taken to Galveston, condemned, and sold for $8,800.

The American Commissioner would have rejected the claim on the merits; the British Commissioner would have allowed it in full.

The Umpire held that the claim ought to be excluded from the Commission, as the claimants were, for the purposes of this Commission, Mexicans; but that, as the United States had entertained the claim in correspondence between the two countries, he would decide the case on the merits; and he held that had the order of the Secretary of the Treasury been carried into effect the claimants would have realized nearly the cost of their goods and therefore awarded $25,000.

42. The *Sir Robert Peel.* Jonas Jones and others, owners, for destruction of the vessel in the River St. Lawrence in 1838 by persons alleged to be citizens of the United States.

Disallowed by the Commissioners.

43. Butterfield & Brothers. For the repayment of duties levied on their goods beyond those paid by citizens of other nations, contrary to the convention of 1815 (Document 35). No evidence was submitted.

Dismissed by the Commissioners.

44. J. P. Oldfield & Company, of Manchester, Charles Turner, official assignee. For the repayment of duties levied on goods beyond

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those paid by citizens of other nations, contrary to the convention of 1815 (Document 35).

The Commissioners awarded $3,099.54.

45. Charles Kenworthy, by George H. Taylor, agent. For return of monies alleged to have been illegally obtained by the collector of customs at New York on a charge of having entered goods with false invoices.

This was one of the New York Customhouse Cases (see claim No. 13).

Disallowed by the Commissioners.

46. James Shaw, by George H. Taylor, agent. For return of monies alleged to have been illegally obtained by the collector of customs at New York on a charge of having entered goods with false invoices.

This was one of the New York Customhouse Cases (see claim No. 13).

Disallowed by the Commissioners.

47. John Taylor, Jr., by his executors, Francis Shaw and others. For return of monies alleged to have been illegally obtained by the collector of customs at New York as a compromise of a suit brought on the charge of having entered goods with false invoices.

This was one of the New York Customhouse Cases (see claim No. 13).

Disallowed by the Commissioners.

48. Kerford & Jenkin. George Briscoe Kerford and Thomas Jenkin, of Zacatecas, Mexico, for $300,000, for losses sustained through the detention by United States forces of their caravan conveying goods to the interior of Mexico in 1846.

The United States allowed a drawback of duties on goods imported for the overland trade to Mexico. The war with Mexico stopped all commercial intercourse. Claimants applied for and received permission to send their goods through as being suitable only for the Mexican trade. The caravan with the goods was detained a number of times by United States troops.

The Commissioners disagreed on the merits.

The Umpire reviewed the evidence at some length. He remarked that the claim was not one for actual loss but for alleged diminution of profits arising out of the detention of the caravan; and he rejected the claim, holding that no engagement was entered into by the Government of the United States which could be construed into a license to trade with the enemy or to pursue a course calculated to interfere with military operations and that the detention arose out of the state of war and was a contingency incident under such circumstances to any trading adventure.

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49. Charles Green. For the seizure of certain hardware goods at San Francisco by United States revenue officers.
Disallowed by the Commissioners.

50. William Patterson. For injuries alleged to have been received at Matamoros from the forces of the United States.
Disallowed by the Commissioners.

51. John Potts. For losses occasioned by the closing of his mint in Mexico by the forces of the United States.
Disallowed by the Commissioners.

52. Glen & Company. For the seizure of a quantity of spirits imported into San Francisco in larger packages than permitted by law.
Claimants petitioned the Secretary of the Treasury November 21, 1849, pleading ignorance of the law. The Secretary of the Treasury said that the application was not in proper form but that when amended would be duly considered.
Dismissed by the Commissioners as being in progress of settlement by the Secretary of the Treasury.

53. P. B. Murphy. For return of duties on brandy, levied at San Francisco.
Withdrawn, the duties having been refunded by the collector.

54. Charles B. Hall. For seizure of goods at Cincinnati by United States customhouse officers.
Withdrawn.

55. The *Mary Anne* (or *Mary Amre*). The owners of the vessel, for loss arising out of an infringement of the Emigrant Passenger Act.
Disallowed by the Commissioners.

56. The *Herald*. The owners of the ship, for injuries caused at Marseilles by the U.S. sloop of war *Erie*.
Dismissed by the Commissioners.

57. Honorable W. Black. For lands in the Territory of New Brunswick included by location and adjustment of the boundary line within the State of Maine.
Disallowed by the Commissioners. The following is from Hornby, 58, March 30, 1854:

The Commissioners attended and held a long conference on the several land claims which had been submitted to them, and agreed that inasmuch as there existed competent courts in The United States for the investigation of all questions of title to lands within their jurisdiction, it was not competent for the Commissioners to enter into the merits of these claims, and they accordingly rejected them.

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58. Lord Carteret. For lands granted his ancestors in North and South Carolina to which he alleged himself to be entitled.
Disallowed by the Commissioners.

59. Earl of Dartmouth. For lands formerly granted to him, situated in East Florida.
Disallowed by the Commissioners.

60. The representatives of Colonel Elias Durnford. For lands granted to him in Florida.
Disallowed by the Commissioners.

61. James H. Rogers. For recovery of lands in Florida.
Disallowed by the Commissioners.

62. Thomas Whyte. For recovery of lands in Florida.
Disallowed by the Commissioners.

63. G. Rotchford Clarke. For recovery of lands in Vermont, or the value thereof, granted to his ancestors by the State of New York prior to the admission of Vermont into the Union and claimed to have been reserved to the proprietors under provisions of a treaty between the United States and Great Britain.
Disallowed by the Commissioners.

64. The *Pearl*. James Tindoll and others, owners, for the seizure and condemnation of the bark *Pearl* at San Francisco for alleged breach of the United States navigation laws.
Disallowed by the Commissioners.

65. Duties on cotton goods, Charles Wirgman, agent. For return of duties levied on cotton goods beyond those paid by other nations, in contravention of the convention of 1815 (Document 35).
These claims arose under the Tariff Act of May 22, 1824 (4 Statutes at Large, 25–30), which, from June 30 following, increased the duty on cottons by five cents a square yard, with a proviso that the increase should not be applicable before January 1, 1825, against importations from places eastward of the Cape of Good Hope or beyond Cape Horn.
Claims in favor of various persons were severally allowed by the Commissioners for a stated aggregate of $30,473.48 (the items add up to $29,987.73). Interest was not allowed.

66. Duties on cotton goods, Andrew Mitchell, agent. For return of duties levied on cotton goods as in No. 65.
Claims in favor of various persons were severally allowed by the Commissioners for a stated total of $20,602.65 (the items add up to $20,662.65). Interest was not allowed.

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67. George and Samuel Shaw. For return of monies alleged to have been illegally obtained by the collector of customs at New York in compromise of a suit brought on charge of having entered goods with false invoices.
This was one of the New York Customhouse Cases (see claim No. 13).
Disallowed by the Commissioners.

68. William Broadbent. For return of monies alleged to have been illegally obtained by the collector of customs at New York in compromise of a suit brought on charge of having entered goods with false invoices.
This was one of the New York Customhouse Cases (see claim No. 13).
Disallowed by the Commissioners, not by the Umpire, as stated in Record of Proceedings, 167.

69. William Bottomley, by his executors. For return of monies alleged to have been illegally obtained by the collector of customs at New York in compromise of a suit brought on charge of having entered goods with false invoices.
This was one of the New York Customhouse Cases (see claim No. 13).
Disallowed by the Commissioners.

70. The *Crosthwaite*. Stuart and Simpson, owners, for seizure of the vessel at New Orleans.
Dismissed by the Commissioners.

71. Ship-owners Society. For seizure of the vessel *Ann* in 1819.
Dismissed by the Commissioners.

72. The *Duckenfield*. David Lyons & Company, owners, for return of discriminating duties levied on the vessel.
Dismissed by the Commissioners.

73. The *Science*. Wilson & McClellan, owners, for return of duties levied on the vessel during the year 1846.
Dismissed by the Commissioners.

74. The *Prosperity*. Messrs. Musgrave, owners, for excess of duties imposed on the vessel.
Dismissed by the Commissioners.

75. The Anglo-Mexican Mint Company. For loss caused by an order of the United States prohibiting the exportation of gold from Mexico.
Dismissed by the Commissioners.

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Distribution of the Fund

In the official recapitulations the totals of the awards (mostly rendered in dollars) are given both in dollars and in sterling, at the rate of $4.84 fixed by the Commissioners and the Umpire on January 13, 1855; those in favor of American claimants against the British Government came to $329,734.18 or £68,131 0s. 7½d., and those in favor of British claimants against the Government of the United States to $277,102.88 or £57,252 13s. 4d. (Record of Proceedings, 277–82; Report of Decisions, 77–79, with a trifling error in one of the figures). By Article 4 of the convention the respective sums were payable "by the one Government to the other . . . within twelve months . . . without interest" and subject only to the deduction for expenses specified in Article 6.

If one total were set off against the other, the balance payable to the Government of the United States would be $52,631.30 or £10,878 7s. 3½d.[1]

Shortly after the termination of the Commission the necessary appropriation was voted by Congress; the statute reads (act of March 3, 1855; 10 Statutes at Large, 703–4):

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, pursuant to the convention aforesaid, the sum of two hundred and seventy-seven thousand one hundred and two dollars and eighty-eight cents, having been awarded by the commission to British subjects, claimants under the convention, that sum shall be paid to the duly authorized agent of her Britannic Majesty's government, out of any money in the treasury not otherwise appropriated; deducting therefrom, pursuant to the sixth article of the said convention, on account of the expenses of the said commission, such ratable proportion, not exceeding five per cent. of the whole amount awarded to both citizens of the United States and British subjects, as may be sufficient to defray the said expenses.

Both Marcy and Clarendon proposed that, as between the two Governments, only the balance of $52,631.30 or £10,878 7s. 3½d. be paid, leaving to each Government the distribution of the amounts awarded to its nationals (Marcy to Buchanan, March 6, 1855, D.S., 16 Instructions, Great Britain, 331–32; Clarendon to Crampton, March 16, 1855, D.S., 32 Notes from the British Legation); the difference between the two totals of the awards to American and British claimants respectively was accordingly paid at London; but the matter of the expenses of the Commission, which was adverted to in each of the instructions just cited, was taken into account.

By the last two paragraphs of Article 6 of the convention it was provided that the whole expenses of the Commission should be defrayed by a ratable deduction not exceeding 5 percent from the sums awarded and that any deficiency should be defrayed in moieties by the two Governments. The Commissioners had reported expenses of £2,588 16s. 6d. This sum comprised £1,653 6s. 8d. for the salaries of the Commissioners at the conventional rate of $3,000 or £620 per annum each during the actual time of session from September 15,

[1] It is to be noted that one of the conversions was not quite accurate; £68,131 0s. 7½d. at the rate of $4.84 is $20.01 in excess of $329,734.18. The balance of £10,878 7s. 3½d. is similarly discrepant by $19.97.

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1853, to January 15, 1855, and £935 9s. 10d. for expenses at London, including the salary of the clerk. In so reporting, the Commissioners left it to the two Governments to determine the time when the salaries of the Commissioners should commence and terminate, what traveling expenses, if any, should be allowed, and the compensation of the Umpire, remarking that such further amounts as might be allowed on these accounts were to be added to the sum stated and would be defrayed by a ratable deduction from the awards, not exceeding the 5 percent prescribed by Article 6. The Commissioners also noted that the compensation of the Agents was left to be determined by their respective Governments (Report of Decisions, 80–81).

The expenses reported by the Commissioners (not including their salaries) had been paid by the British Government. In the settlement at London the amount of those expenses, £935 9s. 10d., was apportioned according to the respective totals of the awards to American and British claimants, £508 6s. 7d. being thus chargeable to the United States and £427 3s. 3d. to Great Britain; so the sum of £508 6s. 7d. was deducted from the mentioned balance of £10,878 7s. 3½d., and the remainder, or £10,370 0s. 8d., was paid to Buchanan on May 18, 1855, and was deposited by him on the day following with Baring Brothers & Company, the bankers of the United States, to the credit of the Treasury, "Account, British Claims", subject to the orders of the Secretary of State. When the payment was made, receipts were exchanged for the full amount of the respective totals of the awards (see D.S., 67 Despatches, Great Britain, No. 65, April 6, 1855; No. 71, May 11, 1855, and enclosure, note of Clarendon of May 10, 1855; No. 72, May 18, 1855; No. 73, May 19, 1855). The Umpire, Joshua Bates, had declined to accept compensation.

It resulted from the London settlement that each Government was left to pay its own Commissioner. By the Civil and Diplomatic Appropriation Act of March 3, 1855, $12,000 was appropriated for the compensation and expenses of the Commissioner of the United States, an amount considerably exceeding the meager remuneration fixed by Article 6 of the convention [1] (10 Statutes at Large, 643–75, at p. 668); and by the same statute $12,000 was also appropriated for the compensation and expenses of the Agent of the United States. Those sums, $24,000 in all, were paid by the Treasury (see Senate Executive Document No. 38, 44th Congress, 2d session, serial 1720, p. 50); no part thereof was charged to or deducted from the awards to American claimants; the compensation of the Commissioner of the United States and also that of the Agent were disbursed as expenses of this Government.

The awards in favor of American claimants were paid by the Department of State. To the disbursing officer of the Department, Edward Stubbs, the amount of the appropriation of March 3, 1855, or $277,102.88, was turned over by the Treasury; [2] there were also

[1] For discussion by Attorney General Caleb Cushing of the construction of the clauses of Article 6 of the convention, see 6 Opinions of the Attorneys General, 65–67, June 29, 1853.

[2] $275,035.42 on June 2 and $2,067.46 on September 20, 1855.

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available the proceeds of the payment of £10,370 0s. 8d. made by the British Government at London,[1] or $50,697.93; together the two funds came to $327,800.81.

The expenses [2] paid by Stubbs came to $3,617.18; the remainder of the funds, or $324,183.63, was distributed [3] pro rata among the claimants, whose awards totaled $329,734.18; each claimant therefore received slightly over 98.31 percent of the amount awarded. To the extent of more than 90 percent, the payments were completed by September 1855. The details of the distribution are elaborately shown in three accounts of Stubbs, No. 14031, October 27, 1855; No. 15769, April 25, 1857; and No. 25062, May 29, 1863 (D.S., facsimiles of the originals in the General Accounting Office).

Article 6 of the convention and the act of March 3, 1855 (quoted above from 10 Statutes at Large, 703–4), were thus construed liberally in favor of the American awards; from their total was deducted only $5,550.55 for the expenses of the Commission, or slightly less than 1.7 percent; the items of the deduction were these:

American share of London expenses, £508 6s. 7d. at $4.84	$2,460.31	
Expenses paid by Stubbs	3,617.18	
		$6,077.49
Less difference in conversion	$19.97	
And less difference in exchange	506.97	
		526.94
		$5,550.55

The "Comet" and the "Encomium"

Among the highly important cases before the Commission under this convention were those entitled the *Enterprize*, the *Hermosa*, and the *Creole*. These were American claims for the value of slaves set free at Hamilton, Bermuda, and at Nassau, New Providence, following necessary entrance into port in distress or as a result of wreck or mutiny. The awards made by the Umpire in those three cases ($175,330) came to more than half the total allowed for American claims ($329,734.18); and to them were closely related in principle two cases of earlier origin, the *Comet* and the *Encomium* (for discussion of facts and law in the five cases mentioned, see Moore, International Arbitrations, I, 408–12; IV, 4349–78; Moore, Digest, II, 350–61, and authorities cited; and for the Webster-Ashburton negotiations on the subject of "the better security of American vessels driven by accident

[1] At $4.84, the rate of exchange fixed by the Commission, £10,370 0s. 8d. would be $50,190.96; the proceeds were $506.97 more than this.

[2] The items were:

Nathaniel L. Upham for bringing papers and records to the United States	$329.38
Riggs & Company, 1 percent on $325,733.35	3,257.33
Advertising in newspapers	30.47

[3] Except only for $196.63, one third of the award of $600 in the case of the brig *Douglas*, docket No. 15. It seems that the owner of this interest in the claim could not be located, as the item has been traced in Department of State accounts as late as 1876.

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or carried by force into the British West India ports", see vol. 4, pp. 457–69).

The facts in the case of the *Comet* were thus set forth in the note of Martin Van Buren, Minister at London, addressed to Viscount Palmerston, Secretary of State for Foreign Affairs, under date of February 25, 1832, whereby the claim was first presented to the British Government (D.S., 38 Despatches, Great Britain, No. 18, February 28, 1832, enclosure):

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honor, in obedience to instructions recently received from his Government, to submit to the Right Honorable Lord Viscount Palmerston, His Majesty's Principal Secretary of State for Foreign Affairs, the claims of several Citizens of the United States upon His Majesty's Government, for injuries which they have sustained in consequence of certain proceedings of the British Colonial Authorities of the Bahamas.

The prominent facts of the case, in regard to which there does not appear to be any dispute, are as follows:

Certain citizens of the United States, owners of one hundred and sixty four native American Slaves being desirous of removing them, coastwise, from Alexandria in the District of Columbia, to New Orleans, in the State of Louisiana, both places being within the jurisdiction of the United States, shipped them, for that purpose, in December 1830, on board the American Brig Comet, Isaac Staples, Master. The shipment and intended transfer of the said slaves being sanctioned by the laws of the United States, the vessel was regularly cleared at the Customhouse, & provided with all the necessary papers to establish the legality of her voyage. Whilst proceeding thereon the Comet was driven out of her course by adverse winds and tempestuous weather; and, on the night of the 3^{d} January, grounded on an insulated reef about ten miles to the windward of the Island of Abaco; and was there totally lost. Before the vessel went to pieces, an Island Sloop, and some sail boats came to her assistance, and aided in saving the lives of the persons on board, by landing them on a small Key, called Spanish Key, situated between the reef and the Island, at the distance of about three or four miles from the one, and five or six from the other. This Key, though so denominated, is, it appears, but a bare and desert rock, furnishing neither vegetation nor fresh water for the use of man, and separated from the Island by a channel. To obtain the means of subsistence, and fit out the vessels for the accommodation of so great a number of persons, they proceeded to Green Turtle Key, from whence it was Captain Staples' intention to sail in the wrecking vessels for Key West, or some other port of the United States, where he might have found the means of proceeding to his original destination; But failing to prevail upon the wreckers to afford him the use of their vessels, he was obliged to yield to their terms, and to sail in those vessels, with all the persons rescued from the wreck to the port of Nassau in the Island of New Providence, where the wreckers insisted upon carrying them, and where they arrived on the 11th January 1831.

The landing of the slaves from the wreck on Spanish Key, their transfer to Green Turtle Key and final removal to the port of Nassau, appear to have been acts of necessity arising from circumstances of misfortune over which Captain Staples had no control. On his arrival at Nassau, he took every proper step to prevent the landing of the Slaves, and immediately purchased, for 4000 dollars a Brig which he proceeded to fit out with all possible despatch for the conveyance of the slaves to New Orleans; but before this could be accomplished, a notice was served upon him by the Customhouse Officers of Nassau, that the slaves would be detained until the opinion of the Governor & Crown Lawyers of the Colony could be obtained as to their liability to seizure under the British Statutes concerning the abolition of the slave trade; and on the 15th of January, the fourth day after their arrival, all the slaves then remaining on board the wrecking vessels, together with fifteen who, notwithstanding the precautions taken to prevent it, had made their escape by swimming to the shore, were seized by the Customhouse Officers for a violation of the Statute above referred to; and those

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remaining on board of the vessels were forcibly taken from the possession and custody of Captain Staples, and landed at Nassau.

Proceedings were forthwith instituted by the Officer who had made the seizure, in the Instance Court of Vice Admiralty for the Bahamas, against the slaves referred to, for an alleged violation of the Act of Parliament 5 Geo. IV chap: 113, "to amend and consolidate the laws for the abolition of the slave trade". This harsh attempt to convert involuntary acts of Captain Staples, growing out of accidents beyond human control, and indispensably necessary to the preservation of human lives, into infractions of a penal statute meriting forfeiture, was, after a full hearing of the parties very properly condemned by the Court, and the libel or information dismissed. The illegality of the seizure having thus been judicially determined, Captain Staples, after complying with the requirements of the Decree, in regard to the costs of suit, trusted that no further difficulty would be interposed to prevent the removal of the slaves to the port of their original destination. The Undersigned regrets to say that this reasonable expectation was not realized. It appears that the Colonial Authorities, notwithstanding the decision referred to, took upon themselves to release the slaves from all the relations in which they had stood with regard to their owners, and refused to surrender them to Captain Staples, notwithstanding also the repeated memorials addressed to them by him and by the Consular Agent of the United States in the Bahamas.

In taking this step, the Governor acted, it would seem, in conformity with an opinion of the Judge of the Instance Court, which did not form a part of the original Decree, but in which he declared that the slaves *having been once landed*, there was, in his opinion, no law by which they could legally be dealt with as slaves in that Colony, or which would authorise the Governor to deliver them up, without their consent, to the claimants, for the purpose of being conveyed to another country, to be so dealt with; and that, therefore, they must, as a necessary consequence, be considered as free persons, and not as slaves illegally imported.

Of the whole number of slaves, one hundred & forty six were insured by three Insurance Offices in the City of New Orleans, for $71.330. The assured having been thus deprived of their property, made their abandonment to the several offices, under the clause in the Policy against the risk of "detainments by Foreign Powers", and on the usual proof of loss and interest, received the amounts of their several policies. The Underwriters, namely, the Louisiana State Insurance Company, The Mississippi Marine and Fire Insurance Company, The Merchants' Insurance Company of New Orleans, together with Col: Charles E Tutt, Navy Agent of the United States at Pensacola in the Territory of Florida, and Sylvanus W. Mudd, owners of the Slaves which were not insured, sent an Agent to Nassau, with instructions to demand the slaves from the Authorities of that place, and, if delivered up, to send them to New Orleans; and in case of refusal to have all the necessary documents duly authenticated, and submit them to the Government of the United States.

The facts in the case of the *Encomium* were similar to those in the case of the *Comet*. The brig *Encomium*, Paschal Sheffield, master, sailed on February 2, 1834, from Charleston for New Orleans with a cargo, passengers, and forty-five slaves. At midnight of February 4 the brig struck, becoming later a total loss, but all on board were landed at Fish Key, Abaco, whence on February 8 they sailed on a schooner and a sloop for Nassau, where they arrived on February 11; on February 12 the slaves were landed and freed by a magistrate; on February 13 the American Consul, George Huyler, in response to his letter of the same date to the Lieutenant Governor, was officially informed in writing "that the only impediment against the American Gentlemen removing from this the fortyfive persons who landed here is that by so doing they are liable to be hanged and every accessary

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to their doing so is also liable to the same punishment"; some of the slaves (nine or ten according to the Consul) voluntarily returned to the United States (D.S., 2 Consular Despatches, Nassau, No. 30, February 24, 1834, and enclosures). The case of the *Encomium* was presented to the British Government by a note of Aaron Vail, Chargé d'Affaires at London, of September 20, 1834 (D.S., 42 Despatches, Great Britain, No. 146, September 22, 1834, enclosure).

Answer to the American representations in the cases of the *Comet* and the *Encomium* was delayed at London; the subject had been referred in 1832 to the law officers of the Crown (diplomatic and other correspondence from 1832 to 1836 is printed, not completely, in Senate Document No. 174, 24th Congress, 2d session, serial 298); and while still under consideration the case of the *Enterprize* had arisen (in 1835) and claim therefor had been presented (see *ibid.*, 35–38).

The conclusion of the British Government was stated in the following note of Palmerston to Andrew Stevenson, Minister at London, of January 7, 1837; the claim on account of the *Enterprize* was rejected, while liability in respect of the *Comet* and the *Encomium* was admitted; and it was pointed out that, "Slavery being now abolished throughout the British Empire", the reasoning of the note was applicable to any similar future cases (D.S., 44 Despatches, Great Britain, No. 16, January 22, 1837):

The Undersigned, His Majesty's Principal Secretary of State for Foreign Affairs, has had the honor to receive the notes which have been addressed to him by Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary from the United States, respecting the claims preferred by the Government of the United States of America, for compensation to the owners of certain Slaves who were on board the "Comet" and "Encomium", wrecked on the Bahama Islands, and on board the "Enterprize", driven, by stress of weather, into the Port of Hamilton, in the Island of Bermuda.

The great importance of the questions which are involved in these claims, has rendered it necessary to give them the fullest and most deliberate consideration.

His Majesty's Government has no means of satisfying claims of this nature, if found to be just, but by applying to Parliament for a vote of money for such purpose, and it is, therefore, the duty of His Majesty's Government fully to investigate the Justice of a claim, before submitting such claim to the consideration of Parliament.

Moreover the claims now in question bring into discussion matters of peculiar delicacy and importance,—the authority of the Laws which have been passed, in this country, for the Suppression of the Slave-Trade, and for the abolition of Slavery:—The applicability of those Laws to natives of Foreign States, who may come within the Dominions of the Crown;—the unrestricted right of every individual, who finds himself within British Jurisdiction, to claim the full protection of the Laws of the land;—all these questions are necessarily raised by the Claims now under discussion; and Mr. Stevenson will, at once, understand the gravity of a decision which was not merely to determine the existence, or extent, of a pecuniary liability, but which was, incidentally, to carry with it important interpretations of the law.

Mr. Stevenson, therefore, and the Government of the United States, will not be surprized that the British Government should have been unable to give an Earlier answer to the applications which have been made to it on this Subject.

The Undersigned has now to inform Mr Stevenson that His Majesty's Government, having considered these cases with an anxiety and care, proportioned to their difficulty and importance, has come to the conclusion that the claim preferred

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with respect to the "*Enterprize*" is not well founded, but that the Claims preferred on account of the "*Comet*" and "*Encomium*", are well founded.

His Majesty's Government is of opinion that the rule, by which these claims should be decided, is, that those claimants, must be considered entitled to compensation, who were lawfully in possession of their Slaves, within the British Territory; and who were disturbed, in their legal possession of those Slaves, by Functionaries of the British Government.

Now, the owners of the Slaves on board the "Enterprize" never were lawfully in possession of those Slaves within the British Territory.

Before the time when the "Enterprize" arrived at Bermuda, Slavery had been abolished throughout the British Empire; and, consequently, the negroes on board the Enterprize had, by entering within British Jurisdiction, acquired rights, which the local Courts were bound to recognize, & were obliged to protect. And here the Undersigned must beg to point out a distinction between laws bearing upon the personal liberty of man, and laws bearing upon the property which man may claim in irrational animals or in inanimate things.

If a Ship, containing such animals or things, were driven, by Stress of weather, into a Foreign port, the owner of the cargo could not be justly deprived of his property by the operation of any particular law which might be in existence in that Port; because, in such case, there would be but two parties interested in the transaction; the Foreign owner and the Local authority; and it would be highly unjust that the former should be stripped of what belongs to him, through the forcible application of the municipal Law of a State to which he had not voluntarily submitted himself.

But in a Case in which a Ship, so driven into a Foreign Port by Stress of weather, contains men over whose personal liberty another man claims to have an acquired right, there are three Parties to the transaction; the owner of the Cargo, the Local Authority, and the alleged Slave; and the third Party is no less entitled, than the first, to appeal to the local Authority for such protection as the Law of the Land may afford him. But if men who have been held in Slavery are brought into a country where the condition of Slavery is unknown, and forbidden, they are necessarily, and by the very nature of things, placed, at once, in the Situation of Aliens, who have, at all times from their birth, been free.

Such persons can, in no Shape, be restrained of their liberty by their former master, any more than by any other person.

If they were given up to such former master, they would be aggrieved, and would be entitled to sue for Damages. But it would be absurd to say that, when a State has prohibited Slavery within its Territory, this condition of things must arise: namely, that as often as a Slave Ship shall take refuge in one of the Ports of that State, liability must necessarily be incurred, either to the former owner of the Slaves, if the slaves be liberated; or to the Slaves themselves if they are delivered up to their former Owner.

If indeed a municipal Law be made which violates the Law of Nations, a question of another kind may arise; But the municipal Law which forbids Slavery, is no violation of the Law of Nations. It is, on the contrary, in strict harmony with the Law of nature; and therefore, when Slaves are liberated, according to such municipal Law, there is no wrong done, and there can be no compensation granted.

His Majesty's Government therefore consider the claim, respecting the Slaves of the "*Enterprize*", to be finally disposed of, by the Principles thus laid down, and it follows, likewise, from thence, that no claim of that kind can ever be entertained.

But, applying the foregoing rule to the case of the "*Comet*", compensation seems to be demandable.

In January 1831, the State of Slavery was permitted in the Bahamas, and, as the Law acknowledged the rights of property which British Subjects, there residing, might acquire in Slaves, a Foreigner might also lawfully have been in possession of Slaves in these Islands, if he did not infringe any of the Laws by which Slavery was there regulated.

Therefore the relation of owner and Slave was not necessarily dissolved by the arrival of Slaves, at that time, in that Colony. The Slaves in question, appear, moreover, to have been actually in the possession of their owner within British

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Territory, at the moment when they were illegally seized by a Functionary of the British Government.

Had it not been for this interference, there can be little doubt that the Slaves would have been re-shipped in the vessel prepared to receive them, and would have reached the Port to which they were destined.

The Undersigned has further to State, that the Case of the "Encomium" does not appear, to his Majesty's Government, to differ substantially from that of the "*Comet*". When the Shipwreck of the "*Encomium*" happened, Slavery was still allowed in the Bahamas; the Slaves on board the "*Encomium*" had never been freed from the Control of the owner, and being virtually in his possession, they also were set at large by a Functionary of the English Government.

It is undoubtedly true that, even if there had been no interference on the part of the British Authorities, it might still have been possible that the owners might not, in the Case of Either of these vessels, have been able to reship the Slaves; yet, as the Seizure was wrongful and prejudicial, some compensation is Equitably due.

His Majesty's Government, therefore, on being furnished with specifick information as to the value of such of the Slaves on board the "Comet" and "*Encomium*", as remained at the Bahamas, and were not removed from thence by their former owners, will be prepared to take into consideration the amount of compensation which it may be reasonable to allow for any injury the owners may be presumed to have sustained from the interference of the British Functionaries in landing the Slaves at the Bahamas.

The Undersigned has accordingly to request that Mr Stevenson will have the goodness to furnish him with such information respecting the pecuniary value of the Slaves, as will enable his Majesty's Government to form an opinion as to the amount of compensation which the owners may be entitled to receive, in consideration of the circumstances under which the Services of their Slaves have been lost to them.

The Undersigned in conclusion has to repeat, that, Slavery being now abolished throughout the British Empire, there can be no well founded claim for Compensation in respect of Slaves who, under any circumstances, may come into the British Colonies, any more than there would be, with respect to Slaves who might be brought into the United Kingdom.

The principles and doctrines of the foregoing note were wholly unacceptable to the Government of the United States, and correspondence thereon continued, but in respect of the cases of the *Comet* and the *Encomium* there was left for discussion and agreement only the amount of the indemnity, involving such questions as the number of slaves for which compensation was to be made, their value, interest, and profits; these were the subject of various exchanges (for correspondence from 1836 to 1838, see Senate Document No. 216, 25th Congress, 3d session, serial 340); the bases of proposed settlement were finally stated by Palmerston in this note of May 2, 1839 (D.S., 46 Despatches, Great Britain, No. 70, May 8, 1839, enclosure):

The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has the honour to inform Mr Stevenson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, that Her Majesty's Government has had under its consideration a Report of the Result of the Inspection, which, in pursuance of the arrangement desired by Mr Stevenson, has been made of the documents in Mr Stevenson's possession relating to the value of the American slaves, wrecked at the Bahamas in the vessels "Comet" and "Encomium", and the Undersigned has to state to Mr Stevenson that those documents appear to contain satisfactory proofs of Insurances effected on 146 slaves on board of the "Comet", and on thirteen of the slaves on board of the "Encomium", and that Her Majesty's Government is willing to take those documents as evidence of the value at which those slaves were estimated by their owners, and of the amount

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of Loss which has consequently been sustained by Citizens of the United States, either as Owners or as Insurers of those Slaves.

From the evidence produced in these cases it likewise appears that there were 164 slaves embarked in the "Comet"; that a child was born on board that vessel a few days after the vessel sailed from Alexandria; and that thus 165 slaves were in the vessel when she was wrecked. With regard however to the infant slave, the papers do not show to whom its Mother belonged, and no claim has been made for its value; and therefore it does not seem to Her Majesty's Government that any sum can properly be allowed as a charge against Great Britain on account of that Infant.

The Undersigned has also to state that from the above mentioned 164 slaves there should be deducted eighteen, on account of whom no just claim can be made against Great Britain, that is to say:

First, Eleven, who escaped from the vessels in which they were confined before the seizure was made by the Custom House Officer, and while those vessels were still under the control of the masters of the Slaves:

Secondly, Five Slaves, who returned to servitude in the United States; and

Thirdly, Two slaves who died soon after the vessel was wrecked.

Thus, there remain 146 Slaves with respect to whom Her Majesty's Government is of opinion that compensation may, with justice, be claimed from Great Britain, according to the principle already stated to Mr Stevenson on the 7th of January 1837.

It appears also that of the Forty five slaves embarked on board the "Encomium", Twelve returned with their owners to the United States, so that there remain Thirty three for whom compensation appears to be due upon the principle above referred to.

The above mentioned documents produced by Mr Stevenson show that 146 slaves out of the 164 embarked in the "Comet" had been insured, and that the insurance effected on those 146 amounted to the sum of 70,000 dollars, and Her Majesty's Government is of opinion that this insurance may be adopted as a fair measure of the value of the 146 slaves taken from the same ship the "Comet", in respect of whom compensation may be considered payable by Her Majesty's Government.

The insurance which was effected on thirteen of the slaves embarked on board the "Encomium" appears to have amounted to the sum of 6,200 dollars; which gives an average of 477 dollars nearly for each slave; and assuming that this rate of value may be reasonably adopted for the remaining twenty slaves embarked in that vessel, the fair value of the thirty three slaves on board the "Encomium" for whom compensation is to be paid by Her Majesty's Government may be taken to be 15,739 dollars: that sum being composed, first of the above mentioned sum of 6,200 dollars for the thirteen insured slaves, and secondly, of the sum of 9,539 dollars, which, according to the above mentioned average would be the value of the Twenty uninsured slaves.

With respect to the charge which the claimants in both of these cases have made, on account of the Expenses incurred by them in procuring evidence in support of their respective claims, it appears to Her Majesty's Government that a reasonable allowance ought to be made upon this head; and deducting some objectionable items contained in the statement given in, Her Majesty's Government is willing to allow the sum of £400 sterling, to cover the aggregate amount of the expenses so incurred.

Her Majesty's Government is moreover, of opinion, that considering all the circumstances which have delayed the admission and adjustment of these claims, interest at the rate of 4 per cent per annum may with justice be demanded from the British Government, upon the sums assigned as compensation on account of the slaves in question, and that such interest ought to run from the dates when those slaves were seized by the officers of the customs at the Bahamas, up to the period when the compensation shall be actually paid.

The Undersigned has to acquaint Mr Stevenson that upon these grounds Her Majesty's Government will recommend to Parliament that there be paid to American Citizens as compensation for the losses which they have sustained in these cases by the interference of British Authorities the sum of 70,000 Dollars on account of the slaves in the "Comet", and the sum of 15.739 dollars on account of

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the slaves in the "Encomium", together with Interest upon those two sums from the time when the slaves were seized, to the time when the money shall be paid: and the Undersigned has further to state that Her Majesty's Government will also recommend to Parliament that the sum of £400 sterling be paid on account of the expenses incurred by the claimants in these cases, in procuring evidence in support of their claims.

The Undersigned, has at the same time to request that Mr Stevenson will explain to the Government of the United States, that the proposed payment is to be considered final and conclusive as regards the two cases in question, and the Undersigned has also to refer Mr Stevenson to the correspondence which has already passed between them upon this subject, for the reasons which will prevent the British Government from admitting, either now or hereafter, any claim for compensation in respect to slaves thrown within British jurisdiction, after the period when slavery was abolished throughout the British dominions.

The Undersigned avails himself of this occasion to renew to Mr Stevenson the assurance of his distinguished consideration.

(Signed) PALMERSTON.

FOREIGN OFFICE *May 2d 1839.*

Stevenson accepted the proposed adjustment by this note of May 6 (*ibid.*, enclosure):

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, has the honor to acknowledge the receipt of the Note of Lord Viscount Palmerston, Her Majesty's Principal Secretary of State for Foreign Affairs, under date of the 2d inst. on the subject of the claims for slaves wrecked at the Bahamas in the American vessels the "Comet" and "Encomium".

The Undersigned hastens to inform Lord Palmerston that he is now prepared to adjust finally these claims upon the principles assumed as the basis of the decision of Her Majesty's Government upon the subject.

The Undersigned therefore respectfully suggests the importance of an immediate appropriation being asked for from Parliament to meet the amount which Her Majesty's Government has admitted to be justly due to the claimants in these cases.

The Undersigned renews to Lord Palmerston assurances of his distinguished consideration.

(Signed) A. STEVENSON.

23 PORTLAND PLACE. *May 6th 1839.*

The report of Stevenson of the conclusion of the foregoing arrangement for the cases of the *Comet* and the *Encomium* was in these terms (*ibid.*):

I beg leave to communicate, for the information of the President, the gratifying intelligence of having at last succeeded in adjusting with this Government the amount of compensation to be paid to the owners of the slaves in the cases of the "Comet" and "Encomium".

The whole amount including interest (which I finally succeeded in getting allowed) will be about the sum of One hundred and fifteen thousand dollars ($115,000) From the correspondence between Lord Palmerston and myself, which is herewith transmitted, you will see that the settlement has been made upon the following basis:—

For the Cargo of the "Comet"	$70. 000
Ditto of the "Encomium"	15. 739
For expenses &c at Nassau £400 sterling	1. 900
For Interest at 4 pr Ct from the time of seizure until the probable time of payment	27. 360
	$115. 000

This amount is thus constituted.

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The whole number of slaves shipped on board the Comet in the District of Columbia was one hundred and sixty four (164), and a child born on the passage, making in all one hundred and sixty five (165). From this number nineteen (19) was deducted, for which they refused to make any compensation, on the following grounds:—

1st That eleven (11) escaped from the vessel as fugitives whilst in the custody of their owners, and before seizure by the Colonial Authorities.

2d That five others (5) returned to servitude in the United States, and did not remain at Nassau, and

3d That three died (including the infant born on the passage) leaving only one hundred and forty six (146) of the Comet's cargo to be paid for.

That this was the number insured, and valued at $70.000, which would give an average of four hundred and seventy nine dollars each ($479), for men, women and children.

That the number of slaves on board the "Encomium" was forty five (45).

Twelve of these they also refused to pay for, upon the ground that they had returned with their owners to the United States, leaving only thirty three (33). Of these, thirteen only had been insured, at the value of six thousand two hundred dollars ($6.200), which would give an average of four hundred and seventy seven dollars ($477), which however they consented to apply to the remaining 20, of the 33. Interest was allowed at the rate of 4 pr centum from the time of seizure to that of payment, and £400 sterling (equal to $1900) for the expenses.

As the two important questions were those in relation to the value of the slaves, and the interest, and having succeeded in obtaining a much larger average value than had ever been before allowed, together with interest upon the whole amount from the time of the seizure and loss, I deemed it best to interpose no obstacle to the terms finally offered, but to accept them, and close the negotiation.

Having accomplished this result after great labour, and difficulty on my part, and as a large portion of the slaves were women and children, some of them under 5 years of age, I flatter myself that the adjustment, and the basis upon which it has been made, will prove alike satisfactory to the claimants and the Government.

The appropriation will be asked for as soon as Parliament re-assembles the week after next, and before the time of payment I shall expect your instructions as to the disposition of the amount should they prefer paying it here and not in the United States.

The sum of £23,500 was voted in the House of Commons "without a division, and after little debate" (*ibid.*, No. 77, August 6, 1839); and payment was made in the following December, having, it seems, been held over for two months or more by reason of the absence of Stevenson from London; his despatch telling of the receipt of the funds includes these passages (*ibid.*, No. 82, December 20, 1839):

On my return to London from an excursion of a few weeks in the North of England, I found that your several Despatches from Nº 58 to Nº 63 inclusive, had been received at the Legation during my absence.

I am gratified in having it in my power to inform you that I have finally adjusted with this Government the cases of the Comet and Encomium, and received the sum of Twenty three thousand, seven hundred and forty three pounds, eleven shillings and five pence, (£23.743.11.5) in full satisfaction of these claims. This amount I paid into the hands of the Messrs Rothschilds (the Bankers of the United States), in pursuance of your instructions, on the day it was received from the Treasury. The interest was calculated to the 2nd of October, the day when they alleged they were prepared to pay the money. You will perceive that the whole amount [1] was received in Sterling, at an exchange of 4.87 cents for every pound sterling. In fixing the rate of exchange, several things were to be considered. Since the revision by Congress in 1834,[2] the American Eagle, or Ten dollar gold piece (which has necessarily become the real standard of value

[1] At the stated rate of exchange, $115,631.19.

[2] Act of June 28, 1834 (4 Statutes at Large, 699–700).

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for all payments in the United States) is intrinsically worth, as compared with the British gold standard, two pounds, one shilling and a half penny (£2.1.0½) making the United States dollar equal to four shillings and one penny and a half (4/1½) British currency; Hence although a conventional value has been assigned to the sovereign at New York, of 4.86 United States Currency, the par value, from the intrinsic value of the gold coins of the respective countries, is rather above 4.87 per pound sterling. In relation to the rates of exchange at which Bills are negotiable between England and the United States, they vary. They have reference usually to an assumed par of $444.⅘ dollars per £100 sterling, or 4/6 the dollar, the exchange being really at par when a premium of about 9½ per cent above that rate is given in the United States currency for Sterling. Under this view the exchange was finally fixed at 4.87, which was in fact more advantageous [1] to the claimants than if the amount had been paid in our own currency, and in the United States. In any view the compensation, as a whole, must be regarded as one of a highly liberal and satisfactory character.

In pursuance of your instructions I now transmit all the evidence in this Legation in relation to these claims (arranged and listed) which I fear however will not enable you, in the final disposition of the fund, to ascertain with the certainty you desire either the names of the individual slaves for whom compensation was refused, or those of their owners.

The amount realized in the United States from the payment at London was $115,024.41; the distribution of the fund was nearly completed by Secretary of State Forsyth before he left office; the unallotted balance of $7,695.28 was paid by him into the Treasury (see House Document No. 242, 27th Congress, 2d session, serial 405); and this sum was subsequently appropriated for the use of the claimants by the act of February 18, 1843 (5 Statutes at Large, 601).

[1] It proved to be slightly less advantageous.

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Treaty Series No. 92
10 Statutes at Large, 992-1000
18 *ibid.*, pt. 2, Public Treaties, 249-53

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FRANCE : FEBRUARY 23, 1853

Consular Convention, signed at Washington February 23, 1853. Original in English and French.
Submitted to the Senate March 8, 1853. (Message of February 25, 1853.) Resolution of advice and consent, with amendments, March 29, 1853. Ratified by the United States April 1, 1853. Ratified by France June 28, 1853. Ratifications exchanged at Washington August 11, 1853. Proclaimed August 12, 1853.

Consular Convention between the United States of America, and His Majesty, the Emperor of the French.

The President of the United States of America, and His Majesty, the Emperor of the French, being equally desirous to strengthen the bonds of friendship between the two nations and to give a new and more ample developement to their commercial intercourse, deem it expedient, for the accomplishment of that purpose, to conclude a special convention which shall determine, in a precise and reciprocal manner, the rights, privileges and duties of the Consuls of the two countries.

Accordingly they have named:

The President of the United States:

The Honorable Edward Everett, Secretary of State of the United States;

Convention Consulaire entre Sa Majesté L'Empereur des Français et les Etats-Unis d'Amérique.

Sa Majesté L'Empereur des Français et le President des Etats-Unis d'Amérique, également désireux de resserrer les liens d'amitié entre les deux nations et d'assurer aux relations de commerce établies entre elles un nouveau et plus ample développement, ont jugé à propos pour atteindre ce but, de conclure une Convention spéciale qui déterminât d'une manière précise et réciproque les droits privilèges et devoirs des Consuls des deux pays;

A cet effet ils ont nommé:

Sa Majesté L'Empereur des Français:

M. Le Comte de Sartiges Commandeur de l'ordre Impérial de la Legion d'honneur &c. &c, son envoyé Extraordinaire et Ministre plenipotentiaire à Washington;

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His Majesty, the Emperor of the French:

The Count de Sartiges, Commander of the Imperial order of the Legion of Honor &c. &c. his Envoy Extraordinary and Minister Plenipotentiary at Washington;

Who, after communicating to each other their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE 1.

The Consuls General, Consuls, and Vice Consuls or Consular Agents of the United States and France shall be reciprocally received and recognized, on the presentation of their Commissions, in the form established in their respective countries. The necessary exequatur for the exercise of their functions shall be furnished to them without charge, and on the exhibition of this exequatur they shall be admitted at once and without difficulty by the territorial authorities, federal or state, judicial or executive, of the ports, cities and places of their residence and district, to the enjoyment of the prerogatives reciprocally granted. The Government that furnishes the exequatur reserves the right to withdraw it on a statement of the reasons for which it has thought proper to do so.

Le Président des Etats-Unis:

L'honorable M. Edouard Everett, Secretaire d'Etat des Etats-Unis;

Les quels après s'être communiqué leurs pleins pouvoirs trouvés en bonne et due forme sont convenus des articles suivants:

ARTICLE 1er

Les Consuls Généraux, Consuls, Vice Consuls ou Agents Consulaires nommés par la France et les Etats Unis seront réciproquement admis et reconnus, en presentant leurs provisions sous la forme établie dans les pays respectifs. On leur délivrera, sans aucun frais, l'exéquatur necessaire à l'exercice de leurs functions, et sur l'exhibition de cet exéquatur, les autorités Territoriales Fédérales ou d'Etat, judiciaires et administratives des ports, villes et lieux de leur résidence et arrondissement Consulaire les y feront jouir aussitôt et sans difficulté des prérogatives accordées réciproquement. Le Gouvernement, qui accorde l'Exéquatur, aura la faculté de le retirer en indiquant les motifs, pour les quels il juge convenable de le faire.

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ARTICLE 2.

The Consuls General, Consuls, Vice Consuls or Consular agents of the United States and France, shall enjoy in the two countries the privileges usually accorded to their offices, such as personal immunity, except in the case of crime, exemption from military billetings, from service in the militia or the national guard and other duties of the same nature; and from all direct and personal taxation whether federal, state or municipal. If, however, the said Consuls General, Consuls, Vice Consuls or Consular Agents are citizens of the country in which they reside, if they are or become owners of property there or engage in commerce, they shall be subject to the same taxes and imposts, and with the reservation of the treatment granted to commercial agents, to the same jurisdiction, as other citizens of the country who are owners of property or merchants.

They may place on the outer door of their offices or of their dwelling houses, the arms of their nation with an inscription in these words: "Consul of the United States", or "Consul of France"; and they shall be allowed to hoist the flag of their country thereon.

They shall never be compelled to appear as witnesses before the courts. When any declaration for judicial purposes or deposition

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ARTICLE 2.

Les Consuls Généraux, Consuls, Vice Consuls ou Agents Consulaires Français et des Etats-Unis, jouiront, dans les deux pays, des privilèges généralement attribués à leurs fonctions, tels que l'immunité personnelle, hormis le cas de crime, l'exemption des logemens militaires, du service de la milice ou de la garde nationale et autres charges de même nature, et celle de toutes les contributions directes et personnelles, fédérales d'Etat, ou municipales: Si toutefois les dits Consuls Généraux, Consuls, Vice Consuls ou Agents Consulaires étaient citoyens du pays de leur résidence, s'ils y étaient ou y devenaient propriétaires, ou qu'ils y fissent le commerce, ils seraient soumis, sous le bénéfice du traitement accordé aux Agents Commerciaux, à la même juridiction que les autres citoyens du pays, proprietaires ou commercants, et aux mêmes taxes et impositions que ceux-ci.

Ils pourront placer, au dessus de la porte extérieure de leurs Chancelleries ou de leurs maisons d'habitation, un tableau aux armes de leur nation avec une inscription portant ces mots: Consul de France, ou Consul des Etats-Unis: ils pourront aussi y arborer le drapeau de leur pays.

Ils ne pourront jamais être contraints à comparâitre comme Témoins devant les Tribunaux: quand la justice du pays aura

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is to be received from them in the administration of justice, they shall be invited in writing to appear in court, and if unable to do so, their testimony shall be requested in writing or be taken orally at their dwellings.

Consular pupils shall enjoy the same personal privileges and immunities as Consuls General, Consuls, Vice Consuls or Consular agents.

In case of death, indisposition or absence of the latter, the Chancellors, Secretaries and Consular pupils attached to their offices, shall be entitled to discharge ad interim the duties of their respective posts, and shall enjoy, whilst thus acting, the prerogatives granted to the incumbents.

ARTICLE 3.

The Consular offices and dwellings shall be inviolable. The local authorities shall not invade them under any pretext. In no case shall they examine or seize the papers there deposited. In no case shall those offices or dwellings be used as places of asylum.

ARTICLE 4.

The Consuls General, Consuls, Vice Consuls or Consular Agents of both countries shall have the right to complain to the authorities of the respective governments, whether federal or local, judicial

quelque déclaration juridique ou déposition à recevoir d'eux, elle les invitera par écrit à se présenter devant elle et, en cas d'empechêment, elle devra leur demander leur temoignage par écrit, ou se transporter à leur domicile, pour l'obtenir de vive voix.

Les Elèves-Consuls jouiront des mêmes privilèges et immunités personnelles que les Consuls Généraux, Consuls, Vice Consuls ou Agents Consulaires.

En cas de décès, d'empechement ou d'absence de ces derniers, leurs élèves Consuls,Chanceliers et Secrétaires seront de plein droit admis à gérer par Interim les affaires des postes respectifs, et jouiront, pendant la dureé de cette gestion intérimaire, des prérogatives accordeés aux Titulaires.

ARTICLE 3.

Les Chancelleries et habitations consulaires seront inviolables. Les autorités locales ne pourrant les envahir, sous aucun prétexte. Elles ne pourrant, dans aucun cas, visiter ni saisir les papiers qui y seront renfermés. Elles ne sauraient, dans aucun cas, servir de lieux d'asile.

ARTICLE 4.

Les Consuls Généraux, Consuls, Vice Consuls ou Agents Consulaires de l'un et l'autre pays auront le droit de s'adresser aux autorités Territoriales, fédérales ou locales, judiciaires et adminis-

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or executive, throughout the extent of their consular district, of any infraction of the treaties or Conventions existing between the United States and France, or for the purpose of protecting informally the rights and interests of their countrymen, especially in cases of absence. Should there be no Diplomatic Agent of their nation, they shall be authorized in case of need, to have recourse to the general or federal government of the country in which they exercise their functions.

ARTICLE 5.

The respective Consuls General and Consuls shall be free to establish in such parts of their districts as they may see fit, Vice Consuls or Consular Agents, who may be taken indiscriminately from among Americans of the United States, Frenchmen or citizens of other countries. These agents, whose nomination, it is understood, shall be submitted to the approval of the respective governments, shall be provided with a certificate given to them by the Consul by whom they are named and under whose orders they are to act.

ARTICLE 6.

The Consuls General, Consuls, Vice Consuls or Consular Agents shall have the right of taking at their offices or bureaux, at the domicil of the parties concerned or on board ship, the declarations

tratives, dans toute l'étendue de leur arrondissement Consulaire, pour reclamer contre toute infraction aux traités ou conventions existant entre la France et les Etats-Unis et pour protéger officieusement les droits et les intérêts de leurs nationaux, notamment en cas d'absence: à défaut d'Agent Diplomatique de leur nation, ils seront, au besoin autorisés à recourir au Gouvernement Général ou fédéral du pays dans lequel ils exercent leurs fonctions.

ARTICLE 5.

Les Consuls Généraux et Consuls respectifs seront libres d'établir, dans tels lieux de leur arrondissement où ils le jugeront utile, des Vice Consuls ou Agents Consulaires, qui pourront être choisis indistinctement parmi les Français, les Américains des Etats-Unis ou les citoyens des autres pays. Ces Agents, dont la nomination sera soumise, bien entendu, à l'approbation des Gouvernements respectifs, seront munis d'un brevêt delivré par le Consul, qui les aura institués et sous les ordres du quel ils agiront.

ARTICLE 6.

Les Consuls Généraux, Consuls, Vice-Consuls ou Agents Consulaires auront le droit de recevoir dans leurs chancelleries ou bureaux, au domicile des parties ou à bord des bâtimens

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of Captains, crews, passengers, merchants or citizens of their country, and of executing there all requisite papers.

The respective Consuls General, Consuls, Vice Consuls or Consular Agents shall have the right, also, to receive at their offices or bureaux, conformably to the laws and regulations of their country, all acts of agreement executed between the citizens of their own country and citizens or inhabitants of the country in which they reside, and even all such acts between the latter, provided that these acts relate to property situated, or to business to be transacted, in the territory of the nation to which the Consul or the agent before whom they are executed may belong.

Copies of such papers duly authenticated by the Consuls General, Consuls, Vice Consuls or Consular Agents, and sealed with the official seal of their Consulate or Consular Agency, shall be admitted in Courts of Justice throughout the United States and France, in like manner as the originals.

ARTICLE 7.

In all the States of the Union whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the

les déclarations des Capitaines, equipages, passagers, négociants ou citoyens de leur pays, et tous les actes qu'ils voudront y passer.

Les Consuls Généraux, Consuls, Vice-Consuls ou Agents Consulaires respectifs auront, en outre, le droit de reçevoir conformément aux lois et réglemens de leur pays, dans leurs chancelleries ou bureaux tous actes conventionnels passés entre des citoyens de leur pays et des citoyens ou habitants du pays, où ils résident, et même tous actes de ces derniers, pourvu que ces actes aient rapport à des biens situés, ou à des affaires à traiter sur le territoire de la nation, à la quelle appartiendra le Consul ou l'Agent devant lequel ils seront passés.

Les expéditions des dits actes dument légalisées par les Consuls Généraux, Consuls, Vice-Consuls ou Agents Consulaires et munies du cachet officiel de leur Consulat ou Agence Consulaire, feront foi en justice dans tous les tribunaux de France et des Etats-Unis, comme le feraient les originaux eux-mêmes.

ARTICLE 7.

Dans tous les états de l'union où les lois actuelles le permettent, aussi longtemps que les dites lois resteront en vigueur et avec leur même portée, les Français jouiront du droit de posséder des biens meubles et immeubles, au même

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same manner as the citizens of the United States. They shall be free to dispose of it as they may please, either gratuitously or for value received, by donation, testament or otherwise, just as those citizens themselves, and in no case shall they be subjected to taxes on transfer, inheritance, or any others different from those paid by the latter, or to taxes which shall not be equally imposed.

As to the States of the Union by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend to them the passage of such laws as may be necessary for the purpose of conferring this right.

In like manner, but with the reservation of the ulterior right of establishing reciprocity in regard to possession and inheritance, the Government of France accords to the citizens of the United States the same rights within its territory in respect to real and pei sonal property and to inheritance, as are enjoyed there by its own citizens.

ARTICLE 8.

The respective Consuls General, Consuls, Vice Consuls or Consular Agents, shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of differences which may arise, either at sea or in port, between the Captain, officers and crew without ex-

titre et de la même manière que les citoyens des Etats-Unis: ils pourront en disposer librement et sans réserve, à titre gratuit ou onéraux, par donation, testament ou autrement, comme les habitants eux-mêmes et ne seront, dans aucun cas, soumis à des droits de mutation, de succession ou autres différents de ceux payés par ces derniers, ou à des taxes qui ne leur seraient pas également imposées.

Quant aux Etats de l'Union, dont la législation actuelle ne permet pas aux Étrangers de posséder des biens immeubles, le President s'engage à leur recommander de passer les lois nécessaires pour leur conférer ce droit.

De même et en se réservant toutefois la faculté d'appliquer ultérieurement la réciprocité, en matière de possession et de succession, le Gouvernement Français reconnait aux citoyens des Etats-Unis le droit de jouir en France, en matière de propriété mobilière, immobilière et de succession, du traitement identique dont jouissent en France en pareille matière, les citoyens Français.

ARTICLE 8.

Les Consuls Généraux, Consuls, Vice-Consuls ou Agents Consulaires respectifs seront exclusivement chargés de l'ordre intérieur à bord des navires de commerce de leur nation et connaitront seuls de tous les différents qui se seront élevés en mer ou s'élèveront dans les ports, entre le Capitaine, les

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ception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not, on any pretext, interfere in these differences, but shall lend forcible aid to the Consuls when they may ask it, to arrest and imprison all persons composing the crew whom they may deem it necessary to confine. Those persons shall be arrested at the sole request of the Consuls addressed in writing to the local authority and supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port, at the disposal of the Consuls. Their release shall be granted at the mere request of the Consuls made in writing. The expenses of the arrest and detention of those persons shall be paid by the Consuls.

ARTICLE 9.

The respective Consuls General, Consuls, Vice Consuls or Consular Agents may arrest the officers, sailors and all other persons making part of the crews of ships of war or merchant vessels of their nation, who may be guilty or be accused of having deserted said ships and vessels, for the purpose of sending them on board, or back to their country. To that end, the Consuls of France in the United

officiers et les hommes inscrits sur le rôle d'Equipage, à quelque titre que ce soit, particulièrement pour le réglement des salaires et l'exécution des engagements réciproquement consentis; les autorités locales ne pourront s'immiscer à aucun titre, dans ces différents, et devront prêter main forte aux Consuls lors qu'ils la requerront, pour faire arrêter et conduire en prison ceux des individus inscrits sur le rôle d'Equipage, à quelque titre que ce soit, qu'ils jugeront à propos d'y envoyer. Ces individus seront arrêtés sur la seule demande des Consuls adresseé par écrit à l'autorité locale et appuyeé d'un extrait officiel du registre de bord ou rôle d'equipage et seront tenus, pendant tout le tems de leur séjour dans le port, à la disposition des Consuls. Leur mise en liberté s'effectuera sur une simple demande des Consuls faite par écrit. Les frais occasionnés par l'arrestation et la détention de ces individus seront payés par les Consuls.

ARTICLE 9.

Les Consuls Généraux, Consuls, Vice-Consuls ou Agents Consulaires respectifs pourront faire arrêter les officiers, matelots et toutes les autres personnes faisant partie des équipages, à quelque titre que ce soit, des bâtimens de guerre ou de commerce de leur nation, qui seraient prévenus ou accusés d'avoir déserté des dits bâtimens, pour les renvoyer à bord, ou les transporter dans

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States shall apply to the magistrates designated in the act[1] of Congress of May 4, 1826, that is to say, indiscriminately to any of the federal, State or municipal authorities; and the Consuls of the United States in France shall apply to any of the competent authorities, and make a request in writing for the deserters, supporting it by an exhibition of the registers of the vessel and list of the crew, or by other official documents, to show that the men whom they claim belonged to said crew. Upon such request alone, thus supported, and without the exaction of any oath from the Consuls, the deserters, not being citizens of the country where the demand is made, either at the time of their shipping or of their arrival in the port, shall be given up to them. All aid and protection shall be furnished them for the pursuit, seizure, and arrest of the deserters, who shall even be put and kept in the prisons of the country at the request and at the expense of the Consuls until these agents may find an opportunity of sending them away. If, however, such opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty and shall not again be arrested for the same cause.

leurs pays. A cet effet ils s'adresseront, les Consuls de France aux Etats Unis aux magistrats désignés dans l'acte[1] du Congrès du 4 Mai, 1826, c'est-à dire indistinctement à toutes les autorités Fédèrales d'Etat ou municipales; les Consuls des Etats Unis en France, à toutes les autorités compétentes; et leur feront par écrit la demande de ces déserteurs, en justifiant, par l'exhibition des registres du batiment ou du rôle d'équipage ou par d'autres documents officiels, que les hommes qu'ils réclament faisaient partie du dit équipage. Sur cette seule demande ainsi justifieé, et sans qu'aucun serment puisse être exigé des Consuls, la remise des déserteurs ne pourra leur être refusée, à moins qu'il ne soit dument prouvé qu'ils étaient citoyens du pays, où l'extradition est réclamée, au moment de leur inscription sur le rôle ou de leur arrivée au port du débarquement: il leur sera donné toute aide et protection pour la recherche, la saisie et l'arrestation de ces déserteurs, les quels seront même détenus et gardés dans les prisons du pays, à la réquisition et aux frais des Consuls, jusqu'à ce que ces Agents aient trouvé une occasion de les faire partir. Si pourtant cette occasion ne se presentait pas dans un délai de trois mois, à compter du jour de l'arrestation, les déserteurs seraient mis en liberté et ne pourraient plus être arrêtés pour la même cause.

[1] 4 Statutes at Large, 160.

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ARTICLE 10.

The respective Consuls General, Consuls, Vice Consuls or Consular Agents shall receive the declarations, protests and reports of all captains of vessels of their nation in reference to injuries experienced at sea; they shall examine and take note of the stowage; and when there are no stipulations to the contrary between the owners, freighters or insurers, they shall be charged with the repairs. If any inhabitants of the country in which the Consuls reside, or citizens of a third nation are interested in the matter and the parties cannot agree, the competent local authority shall decide.

ARTICLE 11.

All proceedings relative to the salvage of American vessels wrecked upon the coasts of France, and of French vessels wrecked upon the coasts of the United States, shall be respectively directed by the Consuls General, Consuls and Vice Consuls of the United States in France, and by the Consuls General, Consuls and Vice Consuls of France in the United States, and until their arrival by the respective Consular Agents wherever an Agency exists. In the places and ports where an agency does not exist, the local authorities, until the arrival of the Consul in whose district the

ARTICLE 10.

Les Consuls Généraux, Consuls, Vice-Consuls ou Agents Consulaires respectifs recevront les déclarations, protestations et rapports de tous Capitaines de batiments de leur nation, pour raison d'avaries essuyées à la mer; ils feront procèder à la constatation de l'arrimage, et ils seront, à moins de stipulations contraires entre les armateurs, les Chargeurs et les assureurs, Chargés du soin de régler ces avaries. Si des habitants du Pays, où résident les Consuls, ou des citoyens d'une tierce nation se trouvaient intéressés dans les dites avaries, et que les parties ne pussent s'entendre à l'amiable, le recours à l'autorité locale compétente serait de droit.

ARTICLE 11.

Toutes les opérations relatives au sauvetage des navires Français naufragés sur les côtes des Etats-Unis et des navires Américains naufragés sur les côtes de France seront respectivement dirigées par les Consuls Généraux, Consuls, Vice Consuls de France aux Etats-Unis, et par les Consuls Généraux, Consuls et vice Consuls Américains en France et jusqu'à leur arrivée par les Agents Consulaires respectifs là où il existera une Agence; Dans les lieux et ports où il n'existerait pas d'Agence, les autorités locales auront, en attendant l'arrivée du Consul, dans l'arrondissement du quel le nau-

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wreck may have occurred, and who shall be immediately informed of the occurrence, shall take all necessary measures for the protection of persons and the preservation of property.

The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if they do not belong to the crews that have been wrecked, and to carry into effect the arrangements made for the entry and exportation of the merchandize saved.

It is understood that such merchandize shall not be subjected to any custom house duty if it is to be re-exported, and if it be entered for consumption, a diminution of such duty shall be allowed in conformity with the regulations of the respective countries.

ARTICLE 12.

The respective Consuls General, Consuls, Vice Consuls or Consular Agents, as well as their Consular pupils, Chancellors and Secretaries, shall enjoy in the two countries all the other privileges, exemptions and immunities which may at any future time be granted to the agents of the same rank of the most favored nation.

ARTICLE 13.

The present Convention shall remain in force for the space of ten

frage aurait eu lieu et qui devrait être immediatement prévenu, à prendre toutes les mesures nécessaires pour la protection des individus et la conservation des effets naufrages.

Les autorités locales n'auront d'ailleurs à intervenir que pour maintenir l'ordre, garantir les intérêts des sauveteurs, s'ils sont étrangers aux équipages naufragés, et assurer l'execution des dispositions à observer, pour l'entrée et la sortie des marchandises sauvées.

Il est bien entendu que ces marchandises ne seront tenues à aucun droit de douane, si elles doivent être réexportées, et que, si elles sont admises à la consommation, on leur accordera les modérations de droits consacrées par la législation douanière des pays respectifs.

ARTICLE 12.

Les Consuls Généraux, Consuls, Vice Consuls ou Agents Consulaires respectifs, ainsi que leurs Élèves Consuls, Chanceliers et secrétaires jouiront dans les deux pays de tous les autres privilèges, exemptions et immunités qui pourraient par la suite être accordés aux Agents de même rang de la nation la plus favorisée.

ARTICLE 13.

La présente convention restera en vigueur pendant dix ans à par-

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years from the day of the exchange of the ratifications, which shall be made in conformity with the respective constitutions of the two countries, and exchanged at Washington within the period of six months, or sooner, if possible. In case neither party gives notice, twelve months before the expiration of the said period of ten years, of its intention not to renew this Convention, it shall remain in force a year longer, and so on from year to year, until the expiration of a year from the day on which one of the parties shall give such notice.

In testimony whereof the respective plenipotentiaries have signed this Convention and hereunto affixed their respective seals.

Done at the City of Washington, the twenty-third day of February, Anno Domini one thousand eight hundred and fifty-three.

EDWARD EVERETT [Seal]
SARTIGES [Seal]

tir de l'échange des ratifications, les quelles seront données conformément aux constitutions respectives des deux pays, et échangées à Washington dans le délai de six mois ou plutôt, si faire se peut; dans le cas ou aucune des parties n'aurait notifié douze mois avant l'expiration de la dite période de dix ans son intention d'en faire cesser les effets, la convention continuera à rester en vigueur encore une année, et ainsi de suite d'année en année, jusqu'à l'expiration d'une année, à partir du jour ou l'une ou l'autre des parties l'aura dénoncée.

En foi de quoi les plenipotentiaires respectifs l'ont signée et y ont apposé leurs cachets respectifs.

Fait à Washington, le vingt-trois de Fevrier Anno Domini mille huit cent cinquante trois.

SARTIGES [Seal]
EDWARD EVERETT [Seal]

NOTES

The signed original of the convention in the treaty file is bound in customary form with the duplicate United States instrument of ratification of April 1 and the original proclamation of August 12, 1853. In the original the French version is written in the right columns and, as may be seen from the printed text, is not impeccable in the matter of accents and spelling.

Another paper in the file is the attested resolution of the Senate of March 29, 1853.

The ratification by the Emperor of the French, dated June 28, 1853, includes the text of the convention in both versions, the French in the left columns. The title of the included text conforms to the amendment of the Senate thereto; but the amendment of the Senate to Article 7 is written in the paragraph following the included text, thus:

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[Translation]

Nous, ayant vu et examiné la dite Convention en toutes et chacune des dispositions qui y sont contenues: Déclarons qu'elle est acceptée, ratifiée et confirmée, et promettons qu'elle sera inviolablement observée, — toutefois sous la réserve expresse que dans le premier paragraphe de l'article VII après les mots "les lois actuelles le permettent," on ajoutera les mots suivants: — *aussi longtemps que les dites lois resteront en vigueur et avec leur même portée,* — lesquels mots seront considérés comme faisant partie intégrante de la Convention, pour être exécutés suivant leur teneur.

We, having seen and examined the said convention in all and each of the provisions which are therein contained, declare that it is accepted, ratified, and confirmed, and promise that it will be inviolably observed, with the express reservation, however, that in the first paragraph of Article 7, after the words "les lois actuelles le permettent", the following words shall be added: *aussi longtemps que les dites lois resteront en vigueur et avec leur même portée,* which words shall be considered as forming an integral part of the convention, to be executed according to their tenor.

The certificate of the exchange of ratifications, in English only, reads as follows:

The Undersigned having met together for the purpose of exchanging the ratifications of a Consular Convention between the United States of America and His Majesty the Emperor of the French, which Convention was concluded and signed at Washington on the 23d day of February last; and the ratifications of the said Instrument having been carefully perused, the said exchange took place this day, in the usual form.

In witness whereof, they have signed the present certificate of exchange, and have affixed thereto their seals.

Done at Washington, the eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-three.

W. L. Marcy. [Seal] Sartiges [Seal]

In the preamble of the convention is the usual mention of the reciprocal communication of the full powers; but no other reference to a full power for either Plenipotentiary has been found.

The Amendments

The text following the headnote is printed so as to include the two amendments proposed by the Senate of the United States and accepted by the French Government.

The convention was sent to the Senate with the message of President Fillmore of February 25, 1853; there were no accompanying papers; that message was not read in the Senate until March 8, during the special session of the Senate which was held after the incoming of the Pierce administration (March 4 to April 11, 1853; see Executive Journal, IX, 53). In the Senate there was opposition to Article 7 of the convention, which was retained by 30 votes to 12 but amended (23 to 11) by inserting in the first sentence, after the opening phrase, "In all the States of the Union whose existing laws permit it," the words "so long and to the same extent as the said laws shall remain in force";[1] the title was also amended by striking from "the

[1] The corresponding insertion in the French version, from the French instrument of ratification, is: "aussi longtemps que les dites lois resteront en vigueur et avec leur même portée".

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President of the United States of America" the first three words;[1] and then (March 29, 1853) the resolution of advice and consent was adopted by 25 votes to 10 (see *ibid.*, 101, 116, 122–23).

The amendments were deemed by Secretary of State Marcy not to "materially affect the treaty" (D.S., 6 Notes to the French Legation, 224, March 31, 1853); Comte de Sartiges, the French Minister at Washington, was of the same opinion and was confident that they would be (as they were) accepted by his Government (D.S., 16 Notes from the French Legation, April 1, 1853, misdated March 2).

The Negotiations

The negotiations which resulted in this convention of February 23, 1853, were initiated by the Government of France. Under date of June 29, 1852, the French Minister at Washington, the Comte de Sartiges, wrote to Secretary of State Webster in these terms (D.S.,15 Notes from the French Legation, revised translation):

> The multiplicity and importance of the commercial relations between France and the United States render it urgent to define and to fix more categorically than hitherto the attributions, rights, and duties of the agents more especially entrusted with the daily care of the interests of commerce in the two countries, the consuls of the United States in France, the French consuls in the United States. President Fillmore has recognized that there were regrettable gaps in the consular legislation of the country, and in his annual message[2] he has called the attention of the Congress to the desirability of taking new measures for filling them. My Government, associating itself completely with this thought, instructs me to propose to the Federal Government to sanction by a treaty the establishment of conventional law in consular matters between France and the United States.
>
> To this end I have the honor to transmit to you a draft of a consular convention analogous to the conventions of like character which the Government of the United States has already concluded with other governments for the purpose of defining the attributions of its consuls and theirs and of surrounding with appropriate guaranties the liberty of action which is necessary for them in the accomplishment of their duty. This convention is on the basis of the principle of entire and complete reciprocity, and for that reason I venture to hope that its spirit as well as its wording will meet with the assent of the Government of the United States.

The French project which accompanied the note of Sartiges just quoted, with a translation thereof (not the translation in the archives volume, which is crude), follows. It will be seen therefrom that twelve of the thirteen articles of that draft were taken *pro tanto* as the basis of the convention. Article 7 was rewritten in an entirely different form; but the remaining articles, while in part expanded and otherwise somewhat revised, correspond generally with the definitive text. This French project is the paper of 28 pages which immediately follows the note of Sartiges of June 29, 1852, in D.S., 15 Notes from the French Legation, and which immediately precedes the translation of that note (somewhat farther on in the same archives volume is a paper of 20 pages, similarly headed, which has in pencil an annotation and an endorsement indicating that it was the enclosure with the note

[1] In the French "le Président des Etats-Unis" becomes "les Etats-Unis".
[2] Of December 2, 1851 (see Richardson, V, 118).

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of June 29, 1852; those indications, however, are erroneous; the articles of that "Projet" correspond textually to the French version of the convention as signed; and that "Projet" was not written until shortly before the convention itself and probably not before February 16, 1853):

Projet de Convention Consulaire entre la France et les Etats-Unis.

ART. 1.

Les Consuls Généraux, Consuls et Vice-Consuls, nommés par la France et les Etats-Unis seront admis et reconnus en présentant leurs provisions selon la forme établie dans les pays respectifs. On leur délivrera sans aucuns frais l'exéquatur nécessaire à l'exercice de leurs fonctions, et sur l'exhibition de cet exequatur les Autorités des ports, villes et lieux de leur résidence les y feront jouir aussitôt et sans difficulté des prérogatives accordées réciproquement.

ART. 2.

Les Consuls Généraux, Consuls et Vice-Consuls Français et des Etats-Unis jouiront dans les deux pays des privileges généralement attribués à leur charge, tels que l'immunité personnelle hormis dans les cas de crime, que l'exemption des logements militaires et que celle de toutes les contributions directes et personnelles. Si, toutefois, lesdits Consuls Généraux, Consuls et Vice-Consuls étaient citoyens du pays de leur résidence, s'ils y étaient ou y devenaient propriétaires ou qu'ils y fissent le commerce, ils seraient soumis aux mêmes taxes et impositions que les autres citoyens du pays, propriétaires ou commerçants.

Ils placeront sur la porte extérieure de leurs chancelleries et de leurs maisons d'habitation les armes de leur nation avec une inscription portant ces mots: Consul de France, ou, Consul des Etats-Unis, et pourront y arborer aux jours de solennités publiques le drapeau de leur pays.

Ils ne seront jamais appelés à comparaitre comme témoins devant les Tribunaux. Quand la Justice du pays aura quelque déclaration à recevoir d'eux, elle devra la leur demander par écrit ou se transporter à leur domicile pour l'obtenir de vive-voix.

[Translation]

Draft Consular Convention between France and the United States

ARTICLE 1

Consuls general, consuls, and vice consuls appointed by France and the United States shall be admitted and recognized on presenting their commissions in accordance with the form established in the respective countries. The exequatur necessary for the exercise of their functions shall be delivered to them without charge, and on the exhibition of such exequatur the authorities of the ports, cities, and places of their residence shall allow them to enjoy immediately and without difficulty the prerogatives reciprocally granted.

ARTICLE 2

French consuls general, consuls, and vice consuls and those of the United States shall enjoy in the two countries the privileges usually connected with their office, such as personal immunity, except in the case of crime, exemption from billeting and from all direct and personal taxes. If, however, the said consuls general, consuls, or vice consuls shall be citizens of the country of their residence, if they shall be or become proprietors there, or if they shall carry on commerce, they shall be subject to the same taxes and imposts as other citizens of the country, whether proprietors or merchants.

They shall place on the outer door of their chancelleries and their dwelling houses the arms of their nation with an inscription in these words: Consul of France, or, Consul of the United States, and may hoist the flag of their country on public holidays.

They shall never be called upon to appear as witnesses before the courts. When the officers of justice of the country shall have some declaration to receive from them, they shall request it of them in writing or go to their domicile to obtain it orally.

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Les elèves - Consuls jouiront des mêmes privilèges et immunités personnels que les Consuls Généraux, Consuls et Vice-Consuls.

En cas de décès, d'empêchement ou d'absence de ces derniers, leurs Chanceliers, leurs Secrétaires et les Elèves-Consuls attachés à leurs fonctions, seront, de plein droit, admis à gérer par intérim les affaires des postes respectifs et jouiront pendant la durée de cette gestion des prérogatives accordées aux titulaires.

Student consuls shall enjoy the same personal privileges and immunities as consuls general, consuls, and vice consuls.

In case of the death, incapacity, or absence of the latter officers, their chancellors, their secretaries, and the student consuls attached to their offices shall automatically be admitted to take charge temporarily of the affairs of the respective posts and shall, during the period of exercising such function, enjoy the prerogatives granted to the regular officers.

ART. 3.

Les Chancelleries et habitations Consulaires seront inviolables; les autorités locales ne pourront les envahir sous aucun prétexte, et ne pourront dans aucun cas visiter ni saisir les papiers qui y seront renfermés.

ARTICLE 3

The consular chancelleries and dwellings shall be inviolable; the local authorities cannot invade them under any pretext and cannot in any case search or seize the papers which are held there.

ART. 4.

Les Consuls Généraux, Consuls et Vice-Consuls de l'un et l'autre pays auront le droit de s'adresser aux autorités locales pour réclamer contre toute infraction aux traités ou conventions existant entre la France et les Etats-Unis, et au besoin, à défaut d'Agent diplomatique de leur nation, ils seront autorisés à recourir au Gouvernement suprême du pays auprès duquel ils exercent leurs fonctions.

ARTICLE 4

Consuls general, consuls, and vice consuls of either country shall have the right to apply to the local authorities to protest against any violation of treaties or conventions existing between France and the United States, and, if necessary, in the absence of a diplomatic agent of their nation, they shall be authorized to have recourse to the supreme government of the country in which they exercise their functions.

ART. 5.

Les Consuls Généraux et Consuls respectifs seront libres d'établir dans tels lieux de leurs arrondissements où ils le jugeront utile, des Agents qui pourront être choisis indistinctement parmi les Francais, les Américains des Etats-Unis ou les citoyens des autres pays. Ces Agents dont la nomination sera soumise, bien entendu, à l'approbation et à l'exequatur du Gouvernement territorial, seront munis d'un brevet délivré par le Consul qui les aura institués, agiront sous ses ordres et, sous les exceptions prévues dans l'article 2, jouiront des mêmes immunités.

ARTICLE 5

The respective consuls general and consuls shall be free to establish in such parts of their districts as they may consider expedient, agents who may be selected indiscriminately from French citizens, Americans of the United States, or citizens of other countries. Such agents, the appointment of whom shall, of course, be subject to the approval of and the issuance of an exequatur by the government to which they are accredited, shall be supplied with a commission issued by the consul who appointed them, shall act under his orders, and, with the exceptions contemplated in Article 2, shall enjoy the same immunities.

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ART. 6.

Les Consuls Généraux, Consuls et Vice-Consuls respectifs auront le choix de recevoir dans leurs Chancelleries, au domicile des parties ou à bord des bâtiments les déclarations des Capitaines, équipage, passagers, négociants ou citoyens de leur pays et tous les actes qu'ils voudront y passer.

Les Consuls Généraux, les Consuls et Vice-Consuls respectifs auront en outre le droit de recevoir dans leurs Chancelleries tous actes conventionnels passés entre des citoyens de leur pays et d'autres de celui où ils résident, et même tous actes conventionnels entre ces derniers seulement, pourvû que ces actes aient rapport à des biens situés ou à des affaires à traiter sur le territoire de la nation à laquelle appartiendra le Consul ou l'Agent devant lequel ils seront passés.

Les expéditions desdits actes, dûment légalisées par les Consuls ou Vice-Consuls et munies du cachet officiel de leur Consulat feront foi en justice comme le feraient les originaux dans tous les tribunaux de la France et des Etats-Unis.

ART. 7.

Les Autorités locales seront tenues, aussi-tôt qu'elles auront connaissance, les Autorités Américaines du décès d'un citoyen Francais aux Etats-Unis et les Autorités Francaises du décès d'un citoyen Américain en France, d'en donner avis sans retard aux Consuls Francais ou Américains dans l'arrondissement desquels la succession sera ouverte.

Aux Etats-Unis l'inventaire de la succession sera fait par l'administrateur public (Public administrator) assisté d'un délégué du Consul de France. Ce délégué approuvera l'inventaire et le fera légaliser par le Consul. L'administrateur Public qui sera le gardien naturel et responsable des valeurs de la succession, désignera pour la gérer et la liquider deux curateurs dont la nomination sera soumise à la ratification du Consul et qui agiront en vertu de pouvoirs légalisés par lui.

En France, les Consuls Américains interviendront de la même façon et

ARTICLE 6

The respective consuls general, consuls, and vice consuls shall have the choice of receiving in their chancelleries, at the domiciles of the parties, or aboard vessels, the declarations of captains, crew, passengers, merchants, or citizens of their country and all the acts which they may wish to draw up there.

The respective consuls general, consuls, and vice consuls shall have, moreover, the right to receive in their chancelleries all the conventional acts drawn up between citizens of their countries and citizens of the one in which they reside, and even all conventional acts between the latter alone, provided that such acts relate to property situated in or affairs to be negotiated in the territory of the nation to which the consul or the agent before whom they are drawn up belongs.

The copies of such acts, duly authenticated by the consuls or vice consuls and provided with the official seal of their consulate, shall be accepted as proof in court as the originals would be in all the courts of France and the United States.

ARTICLE 7

The local American authorities shall be required, as soon as they have knowledge of the death of a French citizen in the United States, and the French authorities as soon as they have knowledge of the death of an American citizen in France, to give notice thereof without delay to the French or American consuls in the districts in which the inheritance is opened.

In the United States the inventory of the inheritance shall be made by the public administrator, assisted by a representative of the consul of France. Such representative shall approve the inventory and shall have it authenticated by the consul. The public administrator, who shall be the natural guardian of, and responsible for, the value of the inheritance, shall designate for the administration and the liquidation thereof two curators, the appointment of whom shall be submitted to the ratification of the consul and who shall act by virtue of powers authenticated by him.

In France the American consuls shall intervene in the same way and before

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auprès des autorités compétentes dans les successions de leurs nationaux.

Dans l'un et l'autre pays, la délivrance d'une succession ne sera faite aux héritiers ou à leurs mandataires qu'un an et un jour après la mort du défunt et lorsque toutes les dettes contractées par lui dans le pays et réclamées dans la période convenue d'un an et d'un jour auront été acquittées.

Les difficultés relatives à une succession seront jugées par les tribunaux du pays où elle sera ouverte.

Les stipulations précédentes s'appliqueront également aux successions de Francais devenus Américains et morts aux Etats-Unis et d'Américains devenus Francais et morts en France, sous la présomption qu'ils laissent dans le pays de leur naissance, des héritiers restés nationaux de ce pays.

Dans ceux des Etats de l'Union où les lois s'opposent à ce qu'un étranger soit propriétaire d'immeubles, un délai de trois ans sera donné aux héritiers Francais pour disposer de la partie immobilière des successions qui viendront à leur échoir.

ART. 8.

Les Consuls Généraux, Consuls et Vice-Consuls respectifs seront exclusivement chargés de l'ordre intérieur à bord des navires de commerce de leur nation et connaitront seuls de tous les différents qui s'élèveront entre le Capitaine, les officiers et les hommes de l'équipage. Les autorités locales ne pourront s'immiscer à aucun titre dans ces différents, et devront prêter main-forte aux Consuls lorsqu'ils la requerront pour faire arrêter et conduire en prison ceux des individus de l'équipage qu'ils jugeraient à propos d'y envoyer.

ART. 9.

Les Consuls Généraux, les Consuls et Vice-Consuls respectifs pourront faire arrêter les matelots et toutes les autres personnes faisant partie des équipages des bâtiments de leur nation qui seraient prévenus ou accusés d'avoir déserté desdits bâtiments, pour les renvoyer à bord ou les faire transporter dans leur pays. A cet effet, ils s'adresseront, les Consuls de France aux Etats-Unis aux magistrats désignés dans l'acte

the competent authorities in the inheritances of their nationals.

In both countries the delivery of an inheritance shall not be made to the heirs or to their attorneys until a year and a day after the death of the decedent and when all debts contracted by him in the country and claimed during the period of a year and a day agreed upon, shall have been paid.

Difficulties relative to inheritances shall be judged by the courts of the country where they are opened.

The preceding stipulations shall apply equally to inheritances of French persons who have become American citizens and died in the United States and of Americans who have become French citizens and died in France, on the presumption that they leave, in the country of their birth, heirs who have remained nationals of that country.

In those States of the Union where the laws forbid a foreigner to become the owner of real estate, a period of three years shall be given to the French heirs to dispose of the real property of the inheritances which may fall to them.

ARTICLE 8

The respective consuls general, consuls, and vice consuls shall be exclusively charged with the maintenance of order aboard the commercial vessels of their nation, and they alone shall take cognizance of all the disputes which may arise between the captain, the ship's officers, and members of the crew. The local authorities cannot intervene on any ground in these disputes and shall be obliged to give assistance to the consuls when they require it to effect the arrest and to take to prison such individuals of the crew as they see fit to send there.

ARTICLE 9

The respective consuls general, consuls, and vice consuls may effect the arrest of the sailors and any other persons forming part of the crews of vessels of their nation who may be reported or accused of having deserted such vessels, in order to return them to the ship or have them transported to their country. For this purpose they shall apply, the consuls of France in the United States to the officials desig-

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du Congrès du 4 mai 1826,[1] c'est à dire, indistinctement à toutes les Autorités Fédérales, de l'Etat ou municipales, les Consuls des Etats-Unis en France également à toutes les Autorités compétentes, et leur feront par écrit la demande de ces déserteurs en justifiant par l'exhibition des registres du bâtiment et du rôle d'équipage ou par d'autres documents officiels que les hommes qu'ils réclament faisaient partie dudit équipage. Sur cette seule demande ainsi justifiée, et sans qu'aucun serment puisse être exigé des Consuls, la remise des déserteurs ne pourra leur être refusée, et il leur sera donné toute aide et assistance pour la recherche, la saisie et l'arrestation de ces déserteurs lesquels seront même détenus et gardés dans les prisons du pays à la réquisition et aux frais des Consuls jusqu'à ce que ces Agents aient trouvé une occasion de les faire partir. Si, pourtant, cette occasion ne se présentait pas dans un délai de trois mois à compter du jour de l'arrestation, les déserteurs seraient mis en liberté et ne pourraient plus être arrêtés pour la même cause.

nated in the act of Congress of May 4, 1826,[1] i.e., indiscriminately to all the Federal, State, or municipal authorities, the consuls of the United States in France likewise to all competent authorities, and shall make in writing the request for the delivery of such deserters, proving by the exhibition of the ship's registers and the crew list or by other official documents that the men whose delivery they request formed a part of the said crew. On such request, supported by such proofs, alone, and without requirement of any oath from the consuls, the delivery of such deserters cannot be refused to them, and every assistance will be given to them for pursuing, seizing, and arresting such deserters, who shall be detained and guarded in the prisons of the country on the request and at the expense of the consuls until such agents have found opportunity to send them away. If, however, such opportunity does not arise within a period of three months from the day of arrest, the deserters shall be placed at liberty and cannot be arrested again for the same cause.

ART. 10.

Les Consuls Généraux, les Consuls et Vice-Consuls respectifs recevront les déclarations, protestations et rapports de tous Capitaines de bâtiments de leur nation pour raison d'avaries essuyées à la mer, et ils seront à moins de stipulations contraires entre les armateurs, les chargeurs et les assureurs, chargés du soin de régler ces avaries. Si des habitants du pays ou résident les Consuls ou des citoyens d'une tierce nation se trouvaient intéressés dans lesdites avaries, et que les parties ne pussent s'entendre à l'amiable, l'autorité locale déciderait.

ARTICLE 10

The respective consuls general, consuls, and vice consuls shall receive the declarations, protests, and reports of all captains of vessels of their nation on account of damage suffered at sea, and in the lack of stipulations to the contrary between the owners, the shippers, and the insurers, they shall be charged with the task of adjusting such damage. If the inhabitants of the country where the consuls or the citizens of a third nation reside should be interested in such damage, and the parties should be unable to come to a friendly agreement, the local authority shall decide the matter.

ART. 11.

Toutes les opérations relatives au sauvetage des navires Français naufragés sur les côtes des Etats-Unis et des navires Américains naufragés sur les côtes de France seront respectivement dirigées par les Consuls Généraux, Consuls et Vice-Consuls de France aux Etats-Unis et par les Consuls Généraux, Consuls et Vice-Consuls Américains en

ARTICLE 11

All the operations relative to salvaging French vessels wrecked on the coasts of the United States and American vessels wrecked on the coasts of France shall be respectively directed by the French consuls general, consuls, and vice consuls in the United States and by the American consuls general, consuls, and vice consuls in France,

[1] That act had special reference to Article 6 of the convention of June 24, 1822 (Document 43), and was to continue in force as long as that convention remained "mutually obligatory" (4 Statutes at Large, 160).

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France, et en leur absence et jusqu'à leur arrivée par les Agents Consulaires respectifs là où existera une Agence. Dans les lieux et ports où n'existera pas d'Agence, les autorités locales auraient, en attendant l'arrivée du Consul dans l'arrondissement duquel le naufrage aurait eu lieu et qui devrait immédiatement être prévenu, à prendre toutes les mesures nécessaires pour la protection des individus et la conservation des effets naufragés.

Ces Autorités locales n'auront d'ailleurs autrement à intervenir que pour maintenir l'ordre, garantir les intérêts des sauveteurs s'ils sont étrangers aux équipages naufragés et assurer l'exécution des dispositions à observer pour l'entrée et la sortie des marchandises sauvées.

Il est entendu que ces marchandises ne seront tenues à aucun droit de douane si elles doivent être réexportées, et que, si elles sont admises à la consommation intérieure, on leur accordera une modération sur les droits d'entrée, proportionnée au dommage souffert.

and during their absence or until their arrival, by the respective consular agents where there is an agency. In the places and ports where there is no agency it shall be incumbent on the local authorities, pending the arrival of the consul in the district where the wreck took place and who must be immediately notified, to take all the necessary measures for the protection of individuals and the conservation of articles involved in the wreck.

Moreover, such local authorities shall not be required to intervene except to maintain order, protect the interests of salvors if they are not members of the wrecked crews, and assure the execution of the measures to be observed for the entry and the clearance of the goods salvaged.

It is understood that such goods shall not be subject to any customs duty if they are to be reexported, and that, if they are admitted to domestic consumption, a reduction in the import duties proportional to the damage suffered shall be granted.

ART. 12.

Les Consuls Généraux, les Consuls et Vice-Consuls respectifs ainsi que leurs Chanceliers, Secrétaires, et les Elèves-Consuls attachés à leurs fonctions jouiront dans les deux pays de tous les autres privilèges, exemptions et immunités qui pourraient par la suite être accordés aux agents de même rang de la nation la plus favorisée.

ARTICLE 12

The respective consuls general, consuls, and vice consuls, as well as their chancellors, secretaries, and the student consuls attached to their offices, shall enjoy in the two countries all other privileges, exemptions, and immunities which may later be granted to agents of the same rank of the most favored nation.

ART. 13.

La présente Convention sera ratifiée conformément aux Constitutions respectives des deux Pays, et les ratifications en seront échangées à Washington dans le délai de six mois ou plûtôt si faire se peut.

Fait à Washington, le

ARTICLE 13

The present convention shall be ratified in accordance with the respective constitutions of the two countries, and the ratifications thereof shall be exchanged at Washington within a period of six months or earlier if possible.

Done at Washington on

No answer to the note of Sartiges of June 29, 1852, is of record. By reason of the failing health of Daniel Webster (who died on October 24, 1852), the Secretary of War, Charles M. Conrad, of Louisiana, became Acting Secretary of State. Following a conversation on the subject, Sartiges addressed to Conrad this note, dated September 30, 1852, wherein he set forth a revised proposal for Article 7 (D.S., 15 Notes from the French Legation, revised translation):

In drawing your attention to a draft consular convention which I presented to Mr. Webster in June last and which I personally drew up, I had the honor to

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point out to you that my Government had found insufficient the guaranties stipulated by Article 7 of this draft in favor of French citizens falling heir to property in the United States, and that it had, moreover, expressly instructed me to request the Federal Government to take the necessary measures in order that, in future, the status of French citizens who own movable or immovable property in the United States and that of their heirs might be assimilated to the status of the citizens of the country itself, just as in France the status of foreigners is, in regard to movable and immovable property and succession, assimilated to that of French citizens.

In point of fact, the law of July 14, 1819,[1] relative to the abolition of the right of escheat and detraction (*droit d'aubaine et de détraction*), says:

> "ARTICLE 1. Articles 726 and 912 of the Civil Code [2] are repealed: foreigners, therefore, shall have the right to inherit, dispose of, and receive property in the same way as French persons throughout the Kingdom."

The Government of the Prince President asks, with good reason, that such identical treatment, inscribed in our laws, and from which your nationals profit, be granted to French persons in the United States. Stipulated in the convention [3] of November 30, 1800, such identical treatment is today imperatively demanded by the state of relations between the United States and France. In the latter country, thanks to the liberal provisions of the French law, many Americans have established themselves and, while retaining their nationality, have become the owners of much real estate. In the United States, to which French emigration is turning daily, our nationals find laws which vary according to the different States, and if they take advantage of the common law, by acquiring American citizenship, they cannot procure exemption for their heirs who have remained in Europe from the rigors of the exceptional law, and their successions become a source of difficulties. In order to remedy this state of things, in conflict with the spirit of our time and unfavorable to the relations maintained between the two countries, I believe that it would be possible to substitute for Article 7 of the draft consular convention, which is in your hands and which would be annulled *in extenso*, the following article: [4]

ARTICLE 7

> "French persons shall enjoy the right to own movable and immovable property in the United States on the same basis and in the same way as citizens of the United States. They may dispose of it freely and without reservation, gratuitously or for a consideration, by donation, testament, or otherwise, like those inhabitants themselves, and shall not in any case be subject to conveyance, succession, or other dues different from those paid by the latter, or to taxes which would not be imposed on them likewise.
>
> "Citizens of the United States shall reciprocally enjoy in France, with regard to movable and immovable property and succession, the same treatment enjoyed in France in such matters by French citizens."
>
> [Here the wording of the proposed article continues with six paragraphs which in all essentials are the same as the first six of the seven paragraphs of Article 7 in the earlier draft. The final paragraph of that article in the earlier draft was omitted, as the two paragraphs above quoted were put forward in its stead.]

This new draft is based on the principle of an exact reciprocity, a principle which serves as a foundation for your international legislation. If it establishes in favor of my nationals the right to dispose freely and without reserve, by testament, donation, or otherwise, of their movable and immovable property owned in the

[1] Duvergier, Collection complète des lois, 2d ed., XXII, 197.
[2] Bourdeaux, Code civil, 36th ed., 276–77, 344.
[3] Article 7 of the convention of September 30, 1800 (Document 25).
[4] That even this wording was deemed not sufficiently broad is indicated by penciled interlineations in the original note; by these there was specifically accorded to French subjects, even if non-resident, the right to *inherit* real estate.

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United States, it assures the same right in favor of your nationals in France, and it stipulates at the same time, for the two countries, equality of dues on conveyances of property, successions, etc., etc., whether involving foreigners or citizens of the country. Moreover, I cannot believe that it injures the interests of the Union in any way. The distinctions established as regards real property between nationals and foreigners were explicable at a time when the country was sparsely populated and when it was a good policy to favor naturalization. At present European emigration has turned toward America, and there is a superabundance of families who come here to set up permanent establishments. Distinctions of nationality have therefore no longer any purpose. I would even say that they are as injurious as they are inequitable. They divert the capital which would be attracted to the United States and which, as you know, so far as the French are concerned, seeks investment in real estate in preference to other property. At present it is perhaps not so much labor power for the soil that is lacking as the capital to exploit it. Capitalists, however, need security and do not wish to be hampered in their operations. The western States understand this; their rapid development is partly due to the liberal policy which they have adopted toward foreigners. By making this policy general and by extending it to the whole Union, you will give sanction to provisions the utility and equity of which are, I believe, generally recognized. I will add that such provisions, accepted by the states of Europe, are, moreover, in conformity with the spirit of your institutions and with the principles which you yourselves have laid down and which govern your foreign relations. It is so much the more to be desired that those States of the Union which have not yet modified their old customs in this respect should be induced to do so, by just and friendly observations, because the continuation on their part of inequality of treatment in the matter of real property and succession with respect to French citizens might lead to exceptional measures in the treatment granted to citizens of such States who have become in France owners of real property, or to their heirs.

On November 6, 1852, Edward Everett, of Massachusetts, became Secretary of State. Of the ensuing discussions between Everett and Sartiges on the subject of the convention, the only record in the archives of the Department of State is another "projet", in French, also in thirteen articles, marked in ink as received on December 28, 1852 (D.S., 15 Notes from the French Legation, the final paper in the volume). From that draft it appears that the French project of June 29, 1852, except for Article 7, was found generally acceptable in principle by Everett; in large part those changes from the draft of June 29, 1852, which appear in the final text of the convention are in the draft of December 28, 1852. Article 7 in the draft last mentioned was rewritten in ten paragraphs, the first two of which were textually the same as the three paragraphs of the French version of the signed convention; then followed (in seven paragraphs), with some quite minor changes of wording, the first six paragraphs of Article 7 in the project of June 29, 1852; and finally was this concluding paragraph (translation):

In each country prescription shall be applicable according to the law of prescription in force in the country where the succession is opened.

That agreed draft of December 28, 1852, was then submitted by Sartiges to his Government. On February 16, 1853, and thus just one week before the signing of the convention, the French Minister wrote to the Secretary of State as follows (D.S., 16 Notes from the French Legation, translation):

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In returning to me the copy of the draft consular convention [1] the wording of which had been drawn up between you and me, after having made therein some modifications of form,[2] the Minister of Foreign Affairs instructs me to inquire of you regarding paragraphs 4 and following of Article 7,[3] as to the possibility of the application of which he is not yet sufficiently informed, what is the practical bearing which you attribute to the provisions contained in those paragraphs and whether, in the thought of the Federal Government, the administrative rights which they confer on consuls are in the domain of the general Constitution and as such placed above and sheltered from the particular laws of each State. Can the Federal Government give us a formal guaranty that throughout the extent of the Union our consuls can in fact and not only in law cooperate in the administration and the liquidation of the successions of their nationals? Without such guaranty the indicated paragraphs of Article 7 would become illusory, or, if they were applied, would serve only to promote conflicts of jurisdiction between French consuls and the State authorities, conflicts which we have a like interest in avoiding.

While the foregoing note was not answered in writing, the French Minister was doubtless told that the "formal guaranty" requested would not be given; and so, as suggested by his note, the paragraphs of Article 7 which were the subject of the inquiry were dropped; and, with the modifications admitted in the other articles of the text, the convention was signed on February 23, 1853.

Thus in the course of the writing of Article 7 various clauses had been proposed, agreed to, and then laid aside; these were the first six paragraphs of the article as put forward by Sartiges with his note of June 29, 1852, and the paragraph (quoted above) regarding prescription (draft of December 28, 1852). Apart from these, the evolution of Article 7 was in four stages: first, the final (seventh) paragraph of the earliest draft (June 29, 1852); secondly, the clauses quoted above in the note of Sartiges of September 30, 1852; thirdly, the clauses of the signed convention, taken from the draft of December 28, 1852; and fourthly, those clauses plus the accepted amendment of the Senate.

The record of the negotiation shows that, as previously stated, the text of the convention, apart from Article 7, had for its basis the French draft of June 29, 1852 (printed above); so for Articles 1 to 6 and 8 to 12 the English version was mostly written as the equivalent of earlier clauses in French. The task was not well done throughout, with the result that there are discrepancies between the English and the French. For example, in the opening sentence of Article 9, "prévenus" is by no means "guilty"; and in Article 10 the provision that consular officers in certain cases "shall be charged with the repairs" of vessels is very different from "Chargés du soin de régler ces avaries".

[1] The draft of December 28, 1852.

[2] There has previously been cited from D.S., 15 Notes from the French Legation, a "Projet" written in French in thirteen articles, which, as stated heretofore, is *erroneously* marked and endorsed as being of June 29, 1852; that paper is probably of the date of the note here quoted, for the "modifications of form" put forward by the French Government are therein indicated by underscoring.

[3] This refers to all of Article 7 as written in the draft of December 28, 1852, except for the opening clauses which were retained in the text as signed.

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Article 7, Paragraph 2

The second paragraph of Article 7 is to the effect that "to the States of the Union by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend . . . the passage of such laws as may be necessary for the purpose of conferring this right". On the day of the exchange of ratifications (August 11, 1853) this provision was made the subject of a note of the French Plenipotentiary wherein, after quoting Article 7 in extenso, he wrote (D.S., 16 Notes from the French Legation, revised translation):

> Now that the ratifications of this convention have been exchanged, I believe the time has come to submit to the President the advisability of calling the attention of the States to the matter which forms the subject of the stipulations of Article 7, and to request from those States whose legislation may still be opposed thereto, the necessary legal provisions in order that henceforth the status of French citizens, owners of movable and immovable property in the United States, and that of their heirs, be assimilated, in the matter of the ownership of movable and immovable property and succession, to the status of citizens of the United States, just as in the like matter the status of citizens of the United States is in France assimilated to that of the French themselves.
>
> The French law of July 14, 1819,[1] relating to the abolition of the right of escheat and of detraction (*droit d'aubaine et de détraction*) provides:
>
> > Article 1. "Articles 726 and 912 of the Civil Code [2] are repealed: *foreigners*, therefore, *shall have the right to inherit, dispose of, and receive property in the same way as French persons throughout the Kingdom.*"
>
> The Emperor's Government asks, justly, that this identical treatment which is provided in our laws and from which your nationals benefit, be accorded to the French in the United States. It is imperatively called for, indeed, by the state of the relations between the two countries. In France, thanks to the liberal provisions of our laws on properties and successions, a number of Americans have established themselves, and, while retaining their nationality, they have acquired immovable property there. In the United States, to which French emigration is turning more and more each day, our nationals find legislation varying according to the different States; and if they take advantage of the ordinary law to acquire American citizenship, they cannot exempt their heirs remaining in Europe from the rigors of the exceptional law, and their successions become a source of difficulties. The marked difference, which I am pointing out, in the status in which the citizens of the two countries are placed, is neither equitable nor in conformity with the spirit of our time. It is unfavorable also to the relations between France and the United States.
>
> For these reasons I have the honor to beg that the President take steps with the States in order to obtain from them the adoption of a uniform legislation assuring to our nationals throughout the Union the enjoyment of the rights granted to Americans throughout the French Empire, of acquiring movable and immovable property, of inheritance, disposition, and free transmission thereof, in any manner whatever, subject to the same charges as the citizens of the States themselves and without the possibility of there being required from them any additional charge as French persons. As in France the ownership of immovable property does not assure any political rights to the foreigner to whose profit it is constituted, neither could the landowner in the United States, in any case, participate by his vote in the local, State, or Federal elections of the place of his residence. The principle of an exact reciprocity, which principle serves as a basis for our international legislation, would serve as a basis for the wording of the act to be submitted to the States for their approval.

[1] Duvergier, Collection complète des lois, 2d ed., XXII, 197.
[2] Bourdeaux, Code civil, 36th ed., 276–77, 344.

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Moreover, I cannot believe that the adoption of such a just and necessary measure would in any way injure the interests of the Union. The distinctions established in the matter of immovable property between nationals and foreigners were explicable at a time when the country was sparsely peopled and when it was good policy to favor naturalization. Today European emigration has turned toward America, and there is a superabundance of families who are coming to set up fixed establishments here. Distinctions of nationality in connection with territorial legislation, therefore, no longer have any point. I will say, even, that they are as injurious as they are unjust; they turn aside capital which is attracted to the United States and which, as you know, on the part of the French, would seek investment in immovable property in preference to other. Now, it is not so much labor that is lacking for the soil as capital to exploit it. But capitalists require security and do not wish to be hindered in their operations. By rendering general the liberal policy that several of the new States have adopted with respect to foreigners and which has contributed notably to their progress, and by extending it throughout the Union, you will authorize provisions the utility and justice of which are, I believe, generally recognized. I shall add that the said provisions are in conformity with the spirit of your institutions and the principles which you yourself have laid down and which govern your foreign relations. It would be all the more to be desired that those States of the Union which have not yet changed their old customs on this subject should, by just and friendly observations, be induced to do so, because the maintenance by them of an inequality of treatment, in the matter of immovable property and succession, with respect to French citizens, might, as is reserved in the paragraph of Article 7, bring on exceptional measures in the treatment accorded to the citizens of those States who have become, in France, owners of immovable property, and to their heirs.

Two months later Sartiges wrote again, referring to his earlier note and to the second paragraph of Article 7 (*ibid.*, October 14, 1853). Marcy now acknowledged the two notes and informed Sartiges "in reply that a Circular letter has been addressed by this Department to the Governors of the respective States, recommending any legislation which may be necessary for the purpose of enabling French subjects to hold real estate" (D.S., 6 Notes to the French Legation, 229, October 20, 1853). The circular letter from Marcy to the Governors was brief and formal, dated October 19, 1853, in these terms (D.S., 42 Domestic Letters, 28–29):

I have the honor to transmit to Your Excellency a copy of a Consular Convention of the 23rd of February last, between the United States and France, and to invite Your Excellency's attention to the second paragraph of its Seventh Article. Pursuant to the stipulation therein contained, the President engages to recommend to those States of the Union by whose laws aliens are not permitted to hold real estate, the passage of such laws as may be necessary for the purpose of conferring that right. In accordance with the stipulation adverted to, the President directs me to communicate to Your Excellency his recommendation that if, pursuant to existing laws, French subjects should not be allowed to hold real estate in ————, that right may, by law, be conferred upon them.

ARTICLE 7

This convention first came before the Supreme Court of the United States in 1856 in the case of *Prevost* v. *Greneaux* (19 Howard, 1–7). In this case it was admitted by counsel (Judah P. Benjamin) for the successful party that "Frenchmen, after its date, are to be considered, for all the purposes of the treaty, as citizens of Louisiana"; and the only point decided was that a succession to which a French subject did not establish his claim until 1854, but which had vested in 1848, was subject to a Louisiana tax.

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In the often cited case of *Geofroy* v. *Riggs*, decided in 1890 (133 U.S. 258–73), it was held that the District of Columbia was within the expression "States of the Union" in Article 7; and regarding the meaning of that article the Court said (pp. 269–70):

> In some States aliens were permitted to hold real estate, but not to take by inheritance. . . . As we read the article it declares that in all the States of the Union by whose laws aliens are permitted to hold real estate, so long as such laws remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as citizens of the United States. They shall be free to dispose of it as they may please—by donation, testament, or otherwise—just as those citizens themselves. But as to the States by whose existing laws aliens are not permitted to hold real estate, the treaty engages that the President shall recommend to them the passage of such laws as may be necessary for the purpose of conferring that right.

An agreement between the two Governments interpreting Article 7 of this convention was effected by notes of February 23 and March 4, 1933 (Executive Agreement Series No. 44), the texts of which follow (48 Statutes at Large 1769–71):

The American Ambassador (Edge) to the French Minister for Foreign Affairs (Paul-Boncour)

No. 2246

EMBASSY OF THE UNITED STATES OF AMERICA,
Paris, February 23, 1933

EXCELLENCY:

I have the honor to communicate to Your Excellency my Government's interpretation of Article 7 of the Consular Convention between the United States of America and France concluded February 23, 1853, in relation to the rights of American citizens in France in connection with the French rent laws. It is my understanding that the following interpretation which has prevailed in the past is concurred in by your Government for the future application of the convention.

The effect of the provisions of Article 7 is to establish the right of citizens of the United States in France to enjoy the same treatment as French citizens in matters relating to the ownership, possession and disposal of property. Accordingly, citizens of the United States are entitled, to enjoy in France the benefit of all the provisions, whether applicable to owners or tenants, contained in the French law of April 1, 1926,[1] as amended by the law of June 29, 1929,[2] governing the relations between lessors and lessees of premises used for residential purposes, and in the law of June 30, 1926,[3] as amended by the law of April 22, 1927,[4] governing the relations between tenants and landlords of premises used for commercial or industrial purposes, notwithstanding Article 11 of the Civil Code[5] and the exceptions or restrictions applicable to foreigners under the aforesaid laws.

I may add that, under the laws of the states of the United States and the District of Columbia, French citizens in the United States enjoy the same treatment as American citizens with regard to the leasing and renting of real property.

I shall be glad to have your confirmation of the agreement thus reached.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration,

WALTER E. EDGE

HIS EXCELLENCY
MONSIEUR PAUL-BONCOUR
Minister for Foreign Affairs
Paris

[1] Duvergier, Collection complète des lois, new series, XXVI, 277–85.
[2] *Ibid.*, XXIX, 463–69.
[3] *Ibid.*, XXVI, 444–48.
[4] *Ibid.*, XXVII, 201–2.
[5] Bourdeaux, Code civil, 36th ed., 11–21a.

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The French Minister for Foreign Affairs (Paul-Boncour) to the American Ambassador (Edge)

[Translation]

MINISTERE
DES
AFFAIRES ETRANGERES.

SOUS-DIRECTION
DES CHANCELLERIES
ET DU
CONTENTIEUX.

CONTENTIEUX
Loyers.

PARIS, *le 4 Mars 1933*

MONSIEUR L'AMBASSADEUR,

Par lettre du 23 du mois dernier vous m'avez fait connaître l'interprétation que votre Gouvernement donne de l'article 7 de la Convention consulaire conclue le 23 février 1853 entre la France et les Etats-Unis d'Amérique, au sujet des droits des citoyens américains en France, relativement à la loi française sur les loyers.

J'ai l'honneur d'informer Votre Excellence que le Gouvernement français accepte, pour l'application future de la Convention, l'interprétation suivante déjà valable dans le passé.

Les dispositions de l'article 7 ont pour effet d'assurer aux citoyens des Etats-Unis résidant en France le droit de jouir du même traitement que les citoyens français en matière de propriété, de possession et de disposition de biens immeubles. En conséquence, les citoyens des Etats-Unis jouiront en France du bénéfice de toutes les dispositions, applicables soit aux propriétaires soit aux locataires, de la loi française du 1er avril 1926, modifiée par celle du 29 juin 1929, régissant les relations entre bailleurs et preneurs de locaux à usage d'habitation, et de la loi du 30 juin 1926, modifiée par celle du 22 avril 1927, régissant les relations entre locataires et propriétaires de locaux à usage commercial ou industriel, nonobstant l'article 11 du Code Civil et les exceptions ou restrictions applicables aux étrangers en vertu des lois précitées.

Je prends acte de ce que, suivant les lois des différents Etats de l'Union et du District de Columbia, les citoyens français résidant aux Etats-Unis jouis-

MINISTRY
FOR
FOREIGN AFFAIRS.

SUB-DIVISION
OF CHANCERIES
AND
LEGAL MATTERS.

LEGAL MATTERS.
Rents.

PARIS, *March 4, 1933.*

MR. AMBASSADOR,

By a letter of the 23d of last month you acquainted me with your Government's interpretation of article 7 of the consular convention concluded on February 23, 1853, between France and the United States of America, dealing with the rights of American citizens in France in relation to the French rent law.

I have the honor to inform Your Excellency that the French Government accepts, for the future application of the convention, the following interpretation, already valid in the past.

The effect of the provisions of article 7 is to secure for citizens of the United States residing in France the right to enjoy the same treatment as French citizens in matters relating to the ownership, possession, and disposal of real property. Consequently, citizens of the United States will enjoy in France the benefit of all the provisions, whether applicable to owners or tenants, of the French law of April 1, 1926, amended by the law of June 29, 1929, governing the relations between lessors and lessees of premises used for residential purposes, and the law of June 30, 1926, amended by the law of April 22, 1927, governing the relations between tenants and landlords of premises used for commercial and industrial purposes, notwithstanding article 11 of the Civil Code and the exceptions or restrictions applicable to foreigners under the aforesaid laws.

I take note that, under the laws of the different States of the United States and of the District of Columbia, French citizens residing in the United

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sent du même traitement que les citoyens américains lorsqu'il s'agit de donner ou de prendre à bail des propriétés immobilières./.

Veuillez agréer, Monsieur l'Ambassadeur, les assurances de ma très haute considération.

J. PAUL-BONCOUR.

SON EXCELLENCE
MONSIEUR WALTER EVANS EDGE
Ambassadeur des Etats-Unis d'Amérique à Paris.

States enjoy the same treatment as American citizens in regard to the leasing or renting of real property.

Kindly accept, Mr. Ambassador, the assurances of my very high consideration.

J. PAUL-BONCOUR.

HIS EXCELLENCY
MR. WALTER EVANS EDGE,
Ambassador of the United States of America, Paris.

DURATION OF THE CONVENTION

Because of the Seamen's Act of March 4, 1915 (38 Statutes at Large, 1164–85), Articles 8 and 9 of this convention and also Article 6 of the convention of June 24, 1822 (Document 43), which is very similar to Article 9 of the later instrument, were terminated as of July 1, 1916 (see Foreign Relations, 1915, 6–10; *ibid.*, 1916, 39–41).

Except for Articles 8 and 9, this convention of February 23, 1853, remains at this writing (January 1, 1941) in force. The convention of June 24, 1822 (Document 43), is also, except for Article 6, in force at the date mentioned, subject to the slight modification of Article 7 thereof made by the agreement of July 17, 1919 (41 Statutes at Large, 1723–24; Treaty Series No. 650).

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VENEZUELA : JUNE 1, 1853

Convention for the Payment of Claims Arising from the Venezuelan "Ley de Espera" of April 9, 1849, signed at Caracas June 1, 1853. Original in English and Spanish, but the list of claims is in Spanish only.
Not subject to ratification. Not proclaimed.

Convention for the payment of the Claims of Citizens of the United States proceeding from the Venezuelan law of Espera[1] of 1849.

Whereas the Executive Power of Venezuela has been duly authorized by the resolution adopted at a joint session of the two Chambers of Congress on the 30th day of April 1853, to take whatever measures it might deem necessary for the purpose of terminating the foreign reclamations on account of the Credits proceeding from the law of Espera of the 9th of April 1849, which may have to be satisfied preremptorily; and whereas the Government of the United States has demanded in that manner the payments of the Credits of its Citizens, having such origin; now therefore the undersigned Isaac Nevett Steele, Chargé d'Affaires of the United States to the Republic of Venezuela and Simon Planas, Secretary of State in the Department of Foreign Affairs of

Convencion para el págo de los Creditos de Ciudadanos de los Estados Unidos procedentes de la ley Venezolana de Espera de 1849.

Por Cuanto el Poder Ejecutivo de Venezuela ha sido debidamente autorizado por la resolucion adoptada en sesion de ambas Camaras del Congreso reunidas en 30 de Abril de 1853, para tomar cuantas medidas creyese necesarias a fin de poner termino á las reclamaciones estrangeras por razon de los creditos provinientes de la lei de espera de 9 de Abril de 1849, que hayan de satisfacerse prerentoriamente; y por cuanto el Gobierno de los Estados Unidos há reclamado de ese modo el pago de los creditos de sus ciudadanos que tienen tal origen; por tanto los infraescritos Simon Planas, Secretario de Estado del Despacho de Relaciones Esteriores del Gobierno de Venezuela é Isaac Nevett Steele, Encargado de Negocios de los

[1] Moratory law.

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the Government of Venezuela, being duly authorized to conclude an arrangement for the payment of these claims, have agreed upon the following articles.

ART. 1st The Government of Venezuela obligates itself to pay to the Government of the United States or to its Chargé d'Affaires at Caracas the full amount of the claims of Citizens of the United States, proceeding from the aforesaid law of Espera, as set forth in a list [1] of said claims, to be made by the undersigned and considered as a part of this agreement, in the following manner, that is to say, the said full amount shall be divided into four equal parts, which shall be paid respectively on the 1st day of June, the 1st day of September and the 1st day of December 1854, and the 1st day of March 1855, together with interest at five per cent per annum, which shall commence to run on the 1st day of July next, and shall continue until the day of payment, and shall be paid at the same time with the installment upon which it may have accrued.

ART. 2d It is also hereby stipulated that if the Government of Venezuela shall fail to pay any one of the four installments mentioned in the preceeding article on the day therein expressed, then the said Chargé d'Affaires of the United States, shall take and

Estados Unidos en la Republica de Venezuela, estando debidamente autorizados para celebrar un arreglo sobre el pago de estas reclamaciones, han convenido en los articulos siguientes.

ARTº 1º El Gobierno de Venezuela se obliga á pagar al Gobierno de los Estados Unidos ó a su Encargado de Negocios en Caracas el importe total de los Creditos de Ciudadanos de los Estados Unidos procedentes de la mencionada lei de Espera que se espresen en una lista [1] de dichos reclamos que se hará por los suscritos y se considerará como parte de este convenio, de la manera siguiente, esto és, dicho importe total se dividirá en Cuatro partes iguales, que se satisfaran respectivamente en los dias 1° de Junio, 1° de Setiembre y 1° de Diciembre de 1854, y 1° de Marzo de 1855, juntamente con los intereses al Cinco por ciento al año, que comenzaran á devengarse desde el 1° de Julio proximo y continuaran hasta el dia del pago, satisfaciendose al mismo tiempo que la porcion a que tocaren.

ARTº 2° Tambien se estipula que si el Gobierno de Venezuela dejare de pagar cualquiera de los Cuatro plazos referidos en el Articulo anterior en el dia alli espresado, entonces el Encargado de Negocios de los Estados Unidos tomará y recibirá directamente de

[1] Printed following the text of this convention.

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receive directly from the Commercial House of A. M. Seixas and C^{o} of La Guayra, or from any other House which he may select in its stead, the one half part of all the ordinary duties upon importations which shall be made by said House, from the date upon which the particular installment not paid became due, until the whole amount of said claims with the corresponding interest thereon, as stipulated in the aforegoing article, shall be fully paid and satisfied. The house which may be selected shall deliver to the Custom House of that port the receipts which shall be given to said House by the American Legation for the half of the duties hereby conceded to it, and from the value of the pagarés [1] given by said House shall be discounted nine per Centum per annum, and the nett proceeds resulting shall be charged by the Custom House to the account of the Legation.

la Casa de Comercio de A M Seixas y C^{a} de La Guaira ó de alguna otra que él elijiere en vez de esta, la mitad, de todos los derechos ordinarios de las importaciones que hiciere dicha Casa desde la fecha del vencimiento del plazo respectivo no pagado, hasta quedar enteramente pagado y satisfecho el importe total de los reclamos, con los intereses que les correspondan, segun lo esplicado en el precedente articulo. La casa que que se elija entregará á la Aduana de aquel puerto los recibos que á la primera dará la Legacion Americana por la mitad de los derechos que a esta se conceden, descontando del valor de los pagarés otorgados por la mencionada casa el nueve por ciento anual y cargando la Aduana en cuenta a la Legacion la cantidad liquida que resulte.

ART. 3^{d} If the mode of payment established in the Second Article should not be possible, because of the inability of the Chargé d'Affaires of the United States to find a merchant in La Guayra with whom to make the proposed arrangement, the responsability of the Government of Venezuela, in conformity with the Stipulations of the first article shall remain in full force.

ART^{o} 3°. En caso de no ser posible la manera de pago establecida en el articulo segundo, por no encontrar el Encargado de Negocios de los Estados Unidos ningun comerciante de la Guaira con quien hacer el espresado arreglo, quedará plenamente vigente la responsabilidad del Gobierno de Venezuela, segun las estipulaciones del articulo primero.

[1] Promises to pay.

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ART 4th It is further stipulated that the interest of five per cent per annum, which has to be paid upon said claims in the first fifteen days of the month of July next, by virtue of the Resolution of the Executive Power of the 20th of May 1851, shall be paid within that time to the Chargé d'Affaires of the United States.

In Witness whereof the undersigned have signed two of one tenor in Caracas on the first day of June one thousand eight hundred and fifty three.

I. NEVETT STEELE

Chargé d'Affaires of the United States to the Republic of Venezuela.

SIMON PLANAS.

ARTº 4º Se estipula ademas que el interes de Cinco por ciento al año, que há de pagarse por dichos creditos en los primeros quince dias del mes de Julio proximo en virtud de la Resolucion del Poder Ejecutivo de 20 de Mayo de 1851, será pagado en ese tiempo al Encargado de Negocios de los Estados Unidos.

En testimonio de lo cual los infraescritos han firmado dos de un tenor en Caracas el primero de Junio de Mil ocho Cientos Cincuenta y tres.

SIMON PLANAS

I. NEVETT STEELE

Chargé d'Affaires of the United States to the Republic of Venezuela

Lista de los creditos citados en el convenio celebrado por los infraescritos en primero de Junio de 1853

Acreedores	Deudores	Cantidades
Emilia Renshaw de Wolff	Felipe Macero	$5 794. 88
Emilia Renshaw de Wolff	Bueno y Betancourt	46. 248. 12
G. K. Circovich	José Antonio Avila	1. 368. 88
M. F. Dallet	José Antonio Avila	3. 427. 52
J G. Jahn	Dolores Carballo	7. 174. 58
Howland y Aspinwal	Matias Castro	19. 016. 14
A. M. Seixas y Cª	Antonio Daly	3. 706. 80
William J. Dubs y Cª	Fernandez y Gutierrez	4. 174. 13
Wupperman y Cª	Tomas y Candelario Padron	4. 767. 98
H. O. L. Lange, como Curador de los menores Natalia y Maclovia Litchfield	José García Paez	558. 79
Emilia Renshaw de Wolff	Manuel Ojeda	3. 188. 98
Emilia Renshaw de Wolff	Tomas Trujillo	1. 753. 74
Emilia Renshaw de Wolff por una órden del Banco nacional contra la Tesoreria General por razon de esperas, fecha 12 de Marzo de 1852		17. 000.
Los tres Creditos ultimamente mencionados pertenecen en parte á Emilia Renshaw de Wolff y en parte á su marido Adolfo Wolff subdito de Prusia.		
		$118. 180. 54

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Hecha y firmada por los infraescritos en Caracas á Seis de Junio de Mil ocho cientos Cincuenta y tres.

I. NEVETT STEELE. *Chargé d'Affaires.*
SIMON PLANAS

[Translation]

List of the Sums Due Referred to in the Agreement Concluded by the Undersigned on the 1st of June 1853

Creditors	Debtors	Amounts
Emily Renshaw Wolff	Felipe Macero	$5, 794. 88
Emily Renshaw Wolff	Bueno & Betancourt	46, 248. 12
G. K. Circovich	José Antonio Avila	1, 368. 88
M. F. Dallett	José Antonio Avila	3, 427. 52
J. G. Jahn	Dolores Carballo	7, 174. 58
Howland & Aspinwall	Matias Castro	19, 016. 14
A. M. Seixas & Co	Antonio Daly	3, 706. 80
William J. Dubs & Co	Fernandez & Gutierrez	4, 174. 13
Wuppermann & Co	Tomas and Candelario Padron	4, 767. 98
H. O. L. Lange, as guardian of the minors Natalia and Maclovia Litchfield	José García Paez	558. 79
Emily Renshaw Wolff	Manuel Ojeda	3, 188. 98
Emily Renshaw Wolff	Tomas Trujillo	1, 753. 74
Emily Renshaw Wolff for an order of the National Bank on the General Treasury on account of moratoria (*esperas*) dated March 12, 1852		17, 000. 00
The three sums due last mentioned belong in part to Emily Renshaw Wolff and in part to her husband, Adolphus Wolff, subject of Prussia.		
		$118, 180. 54

Done and signed by the undersigned at Caracas on the sixth of June one thousand eight hundred and fifty-three.

I. NEVETT STEELE, *Chargé d'Affaires*
SIMON PLANAS

NOTES

The source of the text of this convention printed above is a copy, in English and Spanish, which is with the despatch of Isaac Nevett Steele, Chargé d'Affaires to Venezuela, dated June 15, 1853 (D.S., 9 Despatches, Venezuela, No. 47). That copy is written on sheets of despatch paper, the English on the left pages and the Spanish on the right, except for the list of claims, which is in Spanish only. The final clause of the convention states that "two of one tenor" were signed; but no original document is now available.

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The Full Powers

While the convention does not mention full powers, but states simply that the negotiators were "duly authorized", Steele had a full power under date of January 4, 1850, authorizing him "to agree, treat consult and negotiate of and concerning claims of citizens of the United States on the Government of Venezuela" (D.S., 3 Credences, 330). No record or mention has been found of the full power of the Plenipotentiary of Venezuela.

The Law of "Espera"

The claims settled by this convention arose out of the operation of the *Ley de Espera* passed by the Congress of Venezuela on March 30 and approved by the Executive Power on April 9, 1849, a copy of which is with the despatch of Benjamin G. Shields, then Chargé d'Affaires at Caracas, of April 11, 1849 (D.S., 6 Despatches, Venezuela, No. 83), and the text of which is printed (somewhat inaccurately) in Recopilacion de leyes y decretos de Venezuela, II, 499–501. Under this law a debtor could postpone payment of his debts for six or nine years, during which time all interest thereon would cease. In his despatch of October 3, 1849, Shields wrote concerning the effect of the law as follows (D.S., 7 Despatches, Venezuela, No. 97):

> It has struck dead all manner of means for the enforcement of pecuniary obligations in a legal way. The great desire of the debtor is to be sued, that he may be furnished with a pretext for claiming the benefit of the law, which secures to him the enjoyment of the property of the creditor, for from six to nine years, without interest, or a liability to any molestation whatever. The most evident and notorious dissipation of such property by the debtor, affords no ground for legal complaint by the creditor, who, by the decree of the court, stands bound to unconditional silence for the whole term of the "espera".

It appears from the same despatch that "the diplomatic and Consular agents of England, France, Spain and Holland under instructions from their Governments", had made "strenuous protestations against the operations of the law". Viscount Palmerston, British Secretary of State for Foreign Affairs, in an instruction of June 1849 to the British Consul General at Caracas (*ibid.*, enclosure), characterized the law as an "unexampled attempt of the Venezuelan Legislature and Government to deprive Creditors of their just rights, and practically to transfer, by process of law, to a debtor, the Property of his Creditor". Secretary of State Clayton, in an instruction of May 17, 1850, wrote as follows (D.S., 1 Instructions, Venezuela, 86–88):

> With reference to the memorial of Mrs Emily Renshaw de Wolff, addressed to your predecessor under date the 30th. of September, last [an enclosure with Shields' despatch of October 3, 1849, above cited], praying for the protection of this government against the operation, upon securities held by and debts due her of the "Ley de Espera" of Venezuela, I have to state, that the Department believes that she and all other citizens of the United States whose interests may be or may have been affected by that law are well entitled to that protection referred to. That law operated in effect as a confiscation of the rights and a privation of the remedies of creditors. As such, no foreign government having a just regard to the interests of those of its citizens or subjects who may have resorted to or entrusted their

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property in Venezuela under a belief that the government of that Republic was able and willing to protect those interests, should suffer the law to be applied to debts due to those citizens or subjects. From the Convention, a copy of which is enclosed, it appears that the British government has obtained from that of Venezuela a promise of indemnification for any losses which may have been or may be sustained by the application of the law to debts due to British subjects. This government cannot consent that citizens of the United States should receive different treatment. You will accordingly communicate upon this subject with the Venezuelan government. In any arrangement which you may make upon the subject of claims generally, you will include a provision for the losses which our citizens may previously have sustained in consequence of the "Ley de Espera", but you will be careful that the Convention which you may sign does not contain any article which might operate as a bar to the recovery of any damages which may result from the subsequent operation of the same law.

A copy in Spanish of the convention of April 16, 1850, between Great Britain and Venezuela, which is referred to in the foregoing instruction, is with Steele's despatch of April 22, 1850 (D.S., 8 Despatches, Venezuela, No. 5, enclosure S). Although that convention was approved by the Executive Power, the Venezuelan Congress refused to ratify it. The Congress, however, "passed one law which virtually repeals the 'Ley de Espera', and another, which substitutes the Government in the place of the Debtor, in certain cases where the benefit of the 'Espera' has already been granted" (*ibid.*, No. 6, May 29, 1850). Those two laws—the first of May 27 and the second of May 28, 1850—together with three Executive decrees, of July 1, November 7, and December 30, 1850, hereinafter mentioned, for the purpose of carrying the latter law into effect, are printed in Recopilacion de leyes y decretos de Venezuela, II, 584–85, 590–93.

In his despatch of October 6, 1851, Steele gives the following description of the situation as it then existed (D.S., 8 Despatches, Venezuela, No. 21):

When the instructions above referred to [those of May 17, 1850, cited above] were given, the Executive Branch of the Venezuelan Government, had already admitted the national responsibility in reference to this class of claims, by signing a Convention with the British Chargé d'Affaires providing indemnity for British subjects. This Convention was subsequently submitted to the Venezuelan Congress for its approbation, but that Body declined to ratify it, and adopted the course of passing a general law [cited above], authorizing the Executive Power to substitute the Venezuelan Government in the place of the Debtor, in all cases where the benefit of the law of Espera had been conceded to him against the will of the claiming creditor. A copy of this law was forwarded with my Despatch of May 29th 1850, and I now send Copies of three Decrees [cited above] which have been since issued by the Executive Power with the view of carrying the law into effect. The first Decree designates the mode of establishing the claims, requires that they shall be presented within the peremptory term of six months, (which term was afterwards extended four months at the request of myself and other Diplomatic Agents here) and provides that the claims shall be paid according to special agreements to be made in each case between the Government and the creditors or their representatives, and that these agreements shall be made in the order in which the several claims may be presented to the Government. The second Decree among various details of little interest undertakes almost in express terms, to make the payment of the claims by the Venezuelan Government dependent on the fact of its obtaining from the debtor in each case, securities sufficient to protect it against all loss. To so unjust and unreasonable a provision I of course objected very decidedly, as did others of the Diplomatic Corps resident here, and such a construction seems since to have been placed upon it by the

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officers of Government, at least in the case of Foreign claimants, as to make it of little practical importance. The third Decree declares expressly, what I believe was intended to be attained indirectly by the first, viz, that all Espera claims which have been established and recognized, shall be paid in the order of their original presentation to the Government. The determination to adopt this unjust mode of payment, instead of distributing rateably among all the creditors whose claims had been duly presented and proved, the amount appropriated by the law, will operate strongly in favour of British subjects, and I have no doubt, is the result of the peremptory demands and threats of force, made by Great Britain.

When in the month of Septr of the last year, duly authenticated claims of Citizens of the U.S. arising from the "Ley de Espera" of Venezuela, were for the first time placed in my hands for presentation to this Government, the law and the first Decree mentioned above were already in force, and the question therefore presented itself to me, how far I should acquiesce in the course which Venezuela had adopted, of disposing of those claims by her own internal Legislation. If the law and Decree had been entirely clear, just and complete in their provisions, and such an annual sum had been appropriated as to give assurance of the payment of the claims within a reasonable time, I should have felt no difficulty in saying to American Citizens, that the intervention of the Legation in their behalf was no longer necessary. But instead of this, the law was obscure and imperfect, the annual sum which it appropriated of $100.000 was very small and inadequate in view of the probable amount of claims, and the terms of the Decree indicated a disposition on the part of the Executive Power to deal arbitrarily with the claimants, and I therefore determined to take charge of the claims of Citizens of the U.S. and present them as International Demands, in conformity with the Instructions given to me before the passage of the law. You will accordingly find in my correspondence with the Venezuelan Minister, that while I have always expressed a willingness that his Governmt should act in conformity with its own legislation in the settlement of these claims, if by so doing it could arrange them justly and within a reasonable period, I have at the same time expressly declined to deprive them of their international character, or to admit the obligatory force of the Venezuelan Legislation on the subject. I call your attention to the fact, that by the course I have pursued, the Government of the U.S. is entirely free to act in reference to these "Espera Claims", precisely as it would act in reference to any other international demands, because it now seems probable or at least very possible, that the unjust mode of payment sought to be enforced by this Governmt, may make it proper to insist on the payment of the claims of Citizens of the U.S. without regard to the Venezuelan Law and Decrees which profess to provide an indemnity. All the claims which I have presented amounting in the whole to about $80.000 have been proved and admitted, and the only question now open in reference to them, is as to the mode and time of their payment. I shall endeavour to have some definite understanding on this subject with the Venezuelan Government before the meeting of its next Congress, and am restrained from making the effort now, only by the desire not to interrupt or interfere with my pending negotiation for the settlement of certain old claims. In the meantime I hope to obtain and communicate to you such information in relation to the probable amount of the "Espera claims" and the order of their presentation, as may enable you to decide whether the mode of payment proposed or rather determined upon by this Government ought to be acquiesced in by me.

The American *espera* claims were presented to the Government of Venezuela by Steele from time to time beginning September 30, 1850, when "the necessary proof" of one of the claims of Mrs. Emily Renshaw Wolff and of the claim of William J. Dubs & Company was transmitted with a note of that date (D.S., Legation Archives, Venezuela, Communications to the Government of Venezuela, 1850–66). As claims were presented and were admitted by the Venezuelan Government, "certificates of that fact and of their amount" were issued in favor of the claimants; but in his despatch of September 20,

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1852, Steele wrote that the time and mode of payment still remained unsettled (D.S., 9 Despatches, Venezuela, No. 32).

The Negotiations

It seems that the negotiations which resulted in the signature of this convention were conducted for the most part orally, and very little record thereof has been found in the archives of the Department of State.

Upon receipt of the despatch of September 20, 1852, above cited, stating that no provision had yet been made for payment of the claims, Secretary of State Everett addressed an instruction to Steele which concluded with the following direction (D.S., 1 Instructions, Venezuela, 97–98, December 10, 1852; printed in Manning, Diplomatic Correspondence of the United States, 1831–1860, XII, 480–81):

> You will therefore require of the Venezuelan government, that it make without unnecessary delay, some just arrangement for the prompt payment of all those claims of citizens of the United States arising out of the Venezuelan law of "Espera" of April 1849, which have been investigated and acknowledged to be just.

Following that instruction, Steele addressed a note to the Minister of Foreign Affairs under date of January 7, 1853, demanding an "immediate settlement" (D.S., 9 Despatches, Venezuela, No. 47, June 15, 1853, enclosure; for the despatch, in part, and the enclosure, see Manning, *op. cit.*, XII, 616–17, 620–21).

Meanwhile, in December 1852, the British West India Squadron had visited Margarita; thence a vessel had been despatched to La Guaira to require of the Venezuelan Government the immediate payment of the unsettled balance of the British *espera* claims; and after a "delay of a few days, all these claims amounting to about seventy five thousand dollars, together with other British claims to the amount of about fifteen thousand dollars, were paid in full" (D.S., 9 Despatches, Venezuela, No. 34, January 8, 1853; in part in Manning, *op. cit.*, XII, 617–18).

In reporting this occurrence to Secretary of State Everett (*ibid.*), Steele suggested that "a vessel of war of respectable force may be ordered without delay to La Guayra". This suggestion of Steele met with the approval of President Fillmore (D.S., 1 Instructions, Venezuela, 99–100, March 2, 1853; printed in Manning, *op. cit.*, XII, 481); and under date of February 26, 1853, the Navy Department informed the Secretary of State that "the necessary instructions will be given to the Commander in Chief of the Home Squadron to visit La Guayra himself in his flag ship, or to send to that port one of the vessels under his Command" (D.S., Miscellaneous Letters, January–February 1853, Secretary of the Navy Kennedy to Secretary of State Everett). However, no warship appeared at La Guaira, and this convention was concluded without such support, although Steele wrote: "With the aid of a vessel of war in La Guayra, *I might* perhaps have obtained from this Government terms somewhat more favourable" (D.S., 9 Despatches, Venezuela, No. 47, June 15, 1853).

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It appears from the preamble to the convention that the Executive Power of Venezuela was authorized by a joint resolution of the Congress of April 30, 1853, to take whatever measures might be deemed necessary to settle the claims arising out of the *Ley de Espera*. Steele's original proposition for the settlement was the payment of four quarterly instalments commencing about February 1, 1854, and bearing interest at 7 percent; but considering the financial situation of the country at the time, he consented to a longer credit and a lower rate of interest in order to obtain "some security, of which the Legation might avail itself hereafter to pay these claims, without the necessity of further action on the part of the Venezuelan Government" (*ibid.*). A note of the Venezuelan Minister of Foreign Affairs of May 23, 1853 (D.S., Legation Archives, Venezuela, miscellaneous unbound papers, 1850–59), acknowledged receipt from Steele on that date of a draft of a convention for the settlement of the claims; and nine days later, on June 1, the convention above printed was signed.

The Settlement

Regarding the terms of settlement, Steele, in his despatch of June 15, 1853, above cited, wrote as follows:

> I have had occasion in recent communications to the Department to mention, that this Government was without means and without credit, and my object therefore in the agreement which I have made, has been rather to obtain good security for the ultimate payment of the claims, than to enter into stipulations for their immediate and prompt payment, which I knew would not be fulfilled. By the arrangement as now concluded the claims amounting to $118.000 of this Currency, are to bear an interest of five per cent, and be paid in four equal quarterly installments commencing on the 1st of June next; and a failure to pay any one installment on the day it may become due, will give to the U.S. Legation the right to receive from any commercial House which it may select in La Guaira, the half part of all its duties on importations, until the *whole* of the claims shall be paid. By virtue of this stipulation it is my expectation that the whole amount will be paid in eight or ten months after the first of June next, and this will be accomplished without the necessity of the presence of a naval force and without even threats of employing one.

The claims settled by this convention, a list of which, signed by the negotiators under date of June 6, 1853, is annexed to the convention and is referred to in Article 1 as "a part of this agreement", amounted to $118,180.54 Venezuelan currency. These claims, according to the terms of the convention, were to be paid in four equal quarterly instalments beginning on June 1, 1854, with interest at 5 percent from July 1, 1853. In the event of failure of the Government of Venezuela to pay an instalment on the due date, the United States Chargé d'Affaires was given the right to receive from any commercial house in La Guaira one half of its duties on importations until the whole amount of the claims and interest should be paid. It was further stipulated, in accordance with a resolution of the Executive Power of May 20, 1851 (a certified copy whereof is in D.S., Legation Archives, Venezuela, miscellaneous unbound papers, 1850–59, enclosure with a note of the Minister of Foreign Affairs of

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Venezuela of the same date), that the interest due on the claims up to July 1, 1853, should be paid within the first fifteen days of that month.

No provision for ratification by the Government of Venezuela is contained in this convention, and it seems that formal ratification was deemed unnecessary. As stated in the preamble, the Congress of Venezuela, by a joint resolution of April 30, 1853, had authorized the Executive Power to take whatever measures might be considered necessary for the settlement of claims of foreign Governments arising out of the *Ley de Espera;* and under that general authority the Government of Venezuela negotiated this convention and also conventions with France, Spain, and the Netherlands, of June 14, 17, and 27, 1853, respectively (Tratados públicos y acuerdos internacionales de Venezuela, I, 191–94), none of which, it seems, was subject to subsequent ratification.

Execution of the Convention

The provision of Article 4 that the interest due on the claims to July 1, 1853, should be paid within the first fifteen days of that month, was fulfilled in October 1853, when that interest, amounting to $5,740.63 Venezuelan currency, was paid to the Chargé d'Affaires of the United States, one half in cash and one half in bills due December 6, 1853 (D.S., 9 Despatches, Venezuela, No. 56, October 15, 1853).

The first instalment of the principal sum, which, with interest thereon, was due under the terms of Article 1 on June 1, 1854, was not met; and Charles Eames, then Chargé d'Affaires and later Minister Resident at Caracas, endeavored to make the arrangement with A. M. Seixas & Company provided for in Article 2; but he found that the disposable portion of their duties had already been pledged to the Spanish *espera* claimants at a premium of 20 percent payable out of the amount of the claims (10 *ibid.*, No. 2, July 25, 1854). Unable to make an arrangement with any other commercial house in La Guaira for a commission of less than 10 percent, which he considered excessive, Eames again applied to the Venezuelan Government for payment (*ibid.*, No. 5, October 27, 1854).

A note of Eames to the Minister of Foreign Affairs under date of June 13, 1855 (*ibid.*, No. 12, August 1, 1855, enclosure 1), sets forth the terms of an arrangement whereby the Venezuelan Government agreed to pay $4,000 Venezuelan currency to the Legation on the 20th of each month from June to November 1855, inclusive, and $5,000 Venezuelan currency on the 20th of each month thereafter until the whole amount of principal and interest due under this convention and under that of May 1, 1852 (Document 150), should be paid. Under that arrangement, also, a claim of Wuppermann & Company for $4,045.83 Venezuelan currency, which had been admitted by the Venezuelan Government on January 12, 1854, was added to the list of claims annexed to this convention, making the total principal of the *espera* claims $122,226.37 Venezuelan currency (*ibid.*, No. 5, Octo-

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ber 27, 1854, and enclosures; No. 12, August 1, 1855, enclosure 1; 11 *ibid.*, No. 62, September 8, 1858).

The payments under that arrangement were duly made from June 20, 1855, to August 20, 1857, inclusive, and Eames reported in his despatch of September 8, 1858 (*ibid.*), that interest in full to July 1, 1855, and 40 percent of the total principal, with accrued interest thereon, had been paid to the claimants to the date of that despatch. In addition, two *espera* claims which were admitted by the Venezuelan Government subsequent to the arrangement of June 13, 1855, and which were added to the list of claims—that of Henry Wallis for $5,635.16 Venezuelan currency, with interest at 5 percent from July 1, 1852 (10 *ibid.*, No. 18, February 15, 1856), and that of José del Ollo for $12,000 Venezuelan currency, without interest (*ibid.*, No. 32, January 21, 1857)—were paid to the claimants in full on July 27, 1858, and June 5, 1857, respectively (11 *ibid.*, No. 62, September 8, 1858, and enclosed receipts).

The monthly payments were discontinued by the Government of Venezuela after August 1857, and nothing further was paid until December 1858 (12 *ibid.*, No. 9, February 4, 1859). Pursuant to an oral arrangement of November 20, 1858, between Edward A. Turpin, then Minister Resident, and the Venezuelan Minister of Finance, which is set forth in a note of Turpin to the Minister of Foreign Affairs of December 13, 1858 (*ibid.*, enclosure), "all the monthly payments accrueing since the 1st of March last, computed at the reduced rate of $1.666.66 each", were paid in December 1858; and it was agreed that the payments should be continued at that reduced rate until June 1860 (*ibid.*, No. 24, January 20, 1860). In his despatch of November 12, 1861 (*ibid.*, No. 51), Turpin reported that since 1858 he had received from the Government of Venezuela on account of this convention and that of May 1, 1852 (Document 150), the total sum of $45,666.60 Venezuelan currency, and that from this amount he had paid to the claimants under this convention 25 percent of the total principal, with accrued interest thereon, leaving still unpaid 35 percent of the principal with interest from July 1, 1855.

It appears that no further payments were made by the Government of Venezuela prior to November 15, 1862, for in a schedule of claims which he enclosed with a note to the Government of Venezuela of that date, Erastus D. Culver, then Minister Resident, stated that 35 percent of the principal, with interest thereon from July 1, 1855, to November 22, 1862, amounting to $58,599.11 Venezuelan currency, then remained unpaid (D.S., Legation Archives, Venezuela, Communications to the Government of Venezuela, 1850–66). On December 2, 1862, Culver received from the Government of Venezuela the sum of $100,000 Venezuelan currency on account of claims of the United States (exclusive of the Aves Island claims but including those settled by this convention of 1853), which were then stated to total $110,892.49. (A copy of Culver's receipt to the Government of Venezuela for this payment is in D.S., Legation Archives, Venezuela, miscellaneous unbound papers, 1860–69; see also D.S., 13 Despatches, Venezuela, No. 6, December 16, 1862).

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In another schedule of claims, which he submitted to the Minister of Foreign Affairs with a note of November 14, 1864, Culver stated that there then remained due on the *espera* claims the sum of $5,759.57 Venezuelan currency, with interest from November 22, 1862 (D.S., Legation Archives, Venezuela, Communications to the Government of Venezuela, 1850–66).

In view of the necessary complexity of the accounting and the obscure character of some of the relevant statements, it does not seem possible now to check the accuracy of the calculation then made; no record of further payment has been found in the archives of the Department of State, although there are allusions to the subject at intervals running up to 1876 (D.S., 21 Despatches, Venezuela, No. 93, August 7, 1873, enclosure A; 23 *ibid.*, No. 127, March 25, 1876, and No. 180, August 22, 1876).

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Treaty Series No. 3
10 Statutes at Large, 1001–4
18 *ibid.*, pt. 2, Public Treaties, 15–16

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ARGENTINA : JULY 10, 1853

Treaty for the Free Navigation of the Rivers Paraná and Uruguay, signed at San José de Flores July 10, 1853. Original in English and Spanish.
Submitted to the Senate December 20, 1853. (Message of December 12, 1853.) Resolution of advice and consent June 13, 1854. Ratified by the United States July 5, 1854. Ratified by the Argentine Confederation July 12, 1853, and December 20, 1854. Ratifications exchanged at Paraná December 20, 1854. Proclaimed April 9, 1855.

Treaty for the Free Navigation of the Rivers Paraná and Uruguay, between the United States and the Argentine Confederation.

The President of the United States and His Excellency the Provisional Director of the Argentine Confederation, being desirous of strengthening the bonds of friendship which so happily subsist between their respective States and Countries, and convinced that the surest means of arriving at this result is to take in concert all the measures requisite for facilitating and developing commercial relations, have resolved to determine by treaty the conditions of the free navigation of the Rivers Paraná and Uruguay, and thus to remove the

Tratado para la Libre Navegacion de los Rios Paraná y Uruguay, entre la Confederacion Argentina y los Estados Unidos.

El Excelentisimo Señor Director Provisorio de la Confederacion Argentina y el Presidente de los Estados Unidos, deseando estrechar los vinculos de amistad que tan felizmente existen entre sus Estados y Paises respectivos, y convencidos que de ningun modo podrian mejor alcanzar ese resultado que tomando de comun acuerdo todas las medidas propias á facilitar y desarrollar las relaciones comerciales, han resuelto fijar por un tratado las condiciones de la libre navegacion de los Rios Paraná y Uruguay,[1] y apartar asi los obstaculos

[1] In the signed original of the treaty which is in the archives of the Department of State, but not in the other, this word is erroneously written "Paraguay" in the Spanish version, although rightly "Uruguay" in the English. Upon the exchange of ratifications the mistake was noticed, and the United States instrument of ratification was changed accordingly; so the correct word is here printed. At the same time three slips in the spelling were also noted and put right, as they have been here. These were "ese" for "este" in the second paragraph of the preamble; "ditos" for "dichos" in Article 2; and "recandacion" for "recaudacion" in Article 4.

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obstacles which have hitherto impeded this navigation.

With this object they have named as their Plenipotentiaries, that is to say:

The President of the United States, Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary of the United States to Brazil, and John S. Pendleton, Chargé d'Affaires of the United States to the Argentine Confederation;

And His Excellency the Provisional Director of the Argentine Confederation, Doctor Don Salvador Maria del Carril, and Doctor Don José Benjamin Gorostiaga;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I.

The Argentine Confederation, in the exercise of her sovereign rights, concedes the free navigation of the Rivers Paraná and Uruguay, wherever they may belong to her, to the merchant vessels of all nations, subject only to the conditions which this treaty establishes, and to the regulations sanctioned, or which may hereafter be sanctioned, by the National Authority of the Confederation.

que hasta ahora han embarazado esta navegacion.

Con este objeto han nombrado por sus Plenipotenciarios, á saber:

El Excelentisimo Señor Director Provisorio de la Confederacion Argentina á los Señores Doctor Don Salvador Maria del Carril, y el Doctor Don José Benjamin Gorostiaga;

Y el Presidente de los Estados Unidos á Robert C. Schenck, Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos al Brasil, y á John S. Pendleton, Encargado de Negocios de los Estados Unidos á la Confederacion Argentina;

Quienes, despues de haberse comunicado sus plenos poderes y hallado los en buena y debida forma, han convenido en los Articulos siguientes.

ARTICULO I.

La Confederacion Argentina, en el ejercicio de sus derechos soberanos, permite la libre navegacion de los Rios Paraná y Uruguay, en toda la parte de su curso que le pertenezca, á los buques mercantes de todas las naciones, con sujecion unicamente a las condiciones que establece este tratado, y á los reglamentos sancionados ó que en adelante sancionare la Autoridad Nacional de la Confederacion.

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ARTICLE II.

Consequently the said vessels shall be admitted to remain, load and unload in the places and ports of the Argentine Confederation which are open for that purpose.

ARTICLE III.

The Government of the Argentine Confederation, being desirous to provide every facility for interior navigation, agrees to maintain beacons and marks pointing out the channels.

ARTICLE IV.

A uniform system shall be established by the competent authorities of the Confederation, for the collection of the custom-house duties, harbor, light, police and pilotage dues, along the whole course of the waters which belong to the Confederation.

ARTICLE V.

The High Contracting Parties, considering that the Island of Martin Garcia may, from its position, embarrass and impede the free navigation of the Confluents of the River Plate, agree to use their influence to prevent the possession of the said Island from being retained or held by any State of the River Plate or its Confluents which shall not have given its adhesion to the principle of their free navigation.

ARTICULO II.

Por consiquiente, dichos buques serán admitidos á permanecer, cargar y descargar en los lugares y puertos de la Confederacion Argentina habilitados para ese objeto.

ARTICULO III.

El Gobierno de la Confederacion Argentina, deseando proporcionar toda facilidad á la navegacion interior se compromete á mantener valizas y marcas que señalen los canales.

ARTICULO IV.

Se establecerá por las Autoridades competentes de la Confederacion un sistema uniforme para la recaudacion de los derechos de aduana, puerto, fanal, policia y pilotage en todo el curso de las aguas que pertenecen á la Confederacion.

ARTICULO V.

Las Altas Partes Contratantes, reconociendo que la Isla de Martin Garcia puede, por su posicion, embarazar y impedir la libre navegacion de los Confluentes del Rio de la Plata, convienen en emplear su influjo para que la posesion de dicha Isla no sea retenida ni conservada por ningun Estado del Rio de la Plata ó de sus Confluentes que no hubiera dado su adhesion al principio de su libre navegacion.

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ARTICLE VI.

If it should happen (which God forbid) that war should break out between any of the States, Republics or Provinces of the River Plate or its Confluents, the navigation of the Rivers Paraná and Uruguay shall remain free to the merchant-flag of all nations, excepting in what may relate to munitions of war, such as arms of all kinds, gunpowder, lead and cannon balls.

ARTICULO VI.

Si sucediere (lo que Dios no permita) que la guerra estallase entre cualesquiera de los Estados, Repúblicas ó Provincias del Rio de la Plata ó de sus Confluentes, la navegacion de los Rios Paraná y Uruguay quedará libre para el pabellon mercantil de todas las naciones. No habrá exepcion á este principio sino en lo relativo a las municiones de guerra, como son las armas de toda clase, la polvera, el plomo y las balas de cañon.

ARTICLE VII.

Power is expressly reserved to His Majesty the Emperor of Brazil, and the Governments of Bolivia, Paraguay, and the Oriental State of Uruguay, to become parties to the present Treaty, in case they should be disposed to apply its principles to the parts of the Rivers Paraná, Paraguay and Uruguay over which they may respectively possess fluvial rights.

ARTICULO VII.

Se reserva espresamente á Su Magestad el Emperador del Brasil, y á los Gobiernos de Bolivia, del Paraguay, y del Estado Oriental del Uruguay el poder de hacerse partes al presente Tratado, en el caso de que fueren dispuestos á aplicar sus principios á las partes de los Rios Paraná, Paraguay y Uruguay en las cuales puedan poseer respectivamente derechos fluviales.

ARTICLE VIII.

The principal objects for which the Rivers Paraná and Uruguay are declared free to the commerce of the world, being to extend the mercantile relations of the countries which border them, and to promote immigration, it is hereby agreed that no favor or immunity shall be granted to the flag or trade of any other nation which

ARTICULO VIII.

Los principales objetos, en vista de los cuales los Rios Paraná y Uruguay quedan declarados libres para el comercio del mundo, siendo los de desenvolver las relaciones comerciales de sus paises rivereños, y de fomentar la inmigracion, se conviene que no se concederá ningun favor ó inmunidad al pabellon ó al comercio de cual-

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shall not equally extend to those of the United States.

ARTICLE IX

The present treaty shall be ratified on the part of the Government of the United States within fifteen months from its date, and within two days by His Excellency the Provisional Director of the Argentine Confederation, who shall present it to the first Legislative Congress of the Confederation for their approbation.

The ratifications shall be exchanged at the seat of Government of the Argentine Confederation within the term of eighteen months.

In witness whereof the respective Plenipotentiaries have signed this Treaty and affixed thereto their seals.

Done at San José de Flores on the tenth day of July in the year of Our Lord one thousand eight hundred and fifty three.

[Seal] ROBᵗ C. SCHENCK
[Seal] JNº PENDLETON
[Seal] SALVADOR Mª DEL CARRIL
[Seal] JOSÉ B. GOROSTIAGA

quiera otra nacion que no se estenderá igualmente a los de los Estados Unidos.

ARTICLE IX.

El presente tratado será ratificado por el Excelentisimo Señor Director Provisorio de la Confederacion Argentina á los dos dias de la fecha, debiendo presentarlo para su aprobacion al primer Congreso Legislativo de la Confederacion, y por parte del Gobierno de los Estados Unidos dentro de quince meses.

Las ratificaciones deberán cangearse á los diez y ocho meses en el lugar de la residencia del Gobierno de la Confederacion Argentina.

En fé de lo cual los Plenipotenciarios respectivos han firmado este tratado y le han puesto sus sellos.

Hecho en San José de Flores al dia diez de Julio del año de Nuestro Señor mil ocho cientos cincuenta y tres.

[Seal] SALVADOR Mª DEL CARRIL
[Seal] JOSÉ B. GOROSTIAGA
[Seal] ROBᵗ C. SCHENCK
[Seal] JNº PENDLETON

NOTES

At the time of this treaty the Province of Buenos Aires was not within the Argentine Confederation, which then comprised the other thirteen Provinces of Argentina; the reentry of Buenos Aires into the Confederation dates from the convention between the Argentine Confederation and the Government of Buenos Aires under the mediation and guaranty of the Republic of Paraguay signed at San José de Flores November 10, 1859, ratifications of which were exchanged

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on the day following (text in Perez Uribe, Coleccion de tratados, I, 70–77; see Rowe, The Federal System of the Argentine Republic, 44–54).

Article 35 of the Argentine Constitution of 1860 reads as follows in translation (for the text of the Constitution, see Códigos de la República Argentina, 7–28):

> The appellations *United Provinces of the Rio de la Plata, Argentine Republic, Argentine Confederation,* successively adopted from 1810 to the present, shall in the future be, without distinction, official names for the designation of the Government and territory of the Provinces; but the words "Argentine Nation" shall be used in the drafting and approval of the laws.

This treaty of July 10, 1853, and the one following (Document 161), also with the Argentine Confederation, the Treaty of Friendship, Commerce, and Navigation signed at San José July 27, 1853, are so intimately connected in respect both of time and circumstance that the two are considered together in these editorial notes.

Neither of the two treaties contains any clause of termination or denunciation; and both remain (January 1, 1941) in force.

For convenience of reference in connection with these notes, a map of the "River System of the Rio de la Plata" faces this page.

The Places of Signature

While the two treaties of July 10 and July 27, 1853, are of the same month and were, in fact, signed on dates only two weeks apart, their respective places of signature were some 150 miles distant from each other as the crow flies.

San José de Flores, where the treaty of July 10, 1853, was signed (on July 13) was a *quinta* or country house, the headquarters of General Justo José de Urquiza, the Provisional Director of the Argentine Confederation; it was a short distance outside the limits of the time of the city of Buenos Aires (now within the city limits); this description is from the account of Lieutenant Thomas Jefferson Page, U.S.N.,[1] of his call there on May 27, 1853 (Page, La Plata, the Argentine Confederation, and Paraguay, 39–40):

> I expressed this wish to Mr. Pendleton,[2] who immediately offered to call with me at San José de Flores, a quinta but a short distance beyond the suburbs of the city, where General Urquiza held his head-quarters.
>
> Having obtained the necessary permission, granted only to the representatives of foreign powers, we started for San José, accompanied by Mr. Schenck.[3] After riding through many barricaded streets, a ponderous gate swung back to give us egress; in going through which, we passed over a subterranean mine with train laid. The marks of war were upon the deserted and battered houses, which, standing between the line of the besieging army and city, had suffered in the skirmishing that occasionally took place. After riding a mile and a half in the country, we observed a group of officers lounging before a quinta. There was little of the pomp and circumstance of war about the quarters of Urquiza, and yet he commanded an effective army of gauchos.

[1] Commander from September 14, 1855.
[2] John S. Pendleton, Chargé d'Affaires at Buenos Aires.
[3] Robert C. Schenck, Minister at Rio de Janeiro.

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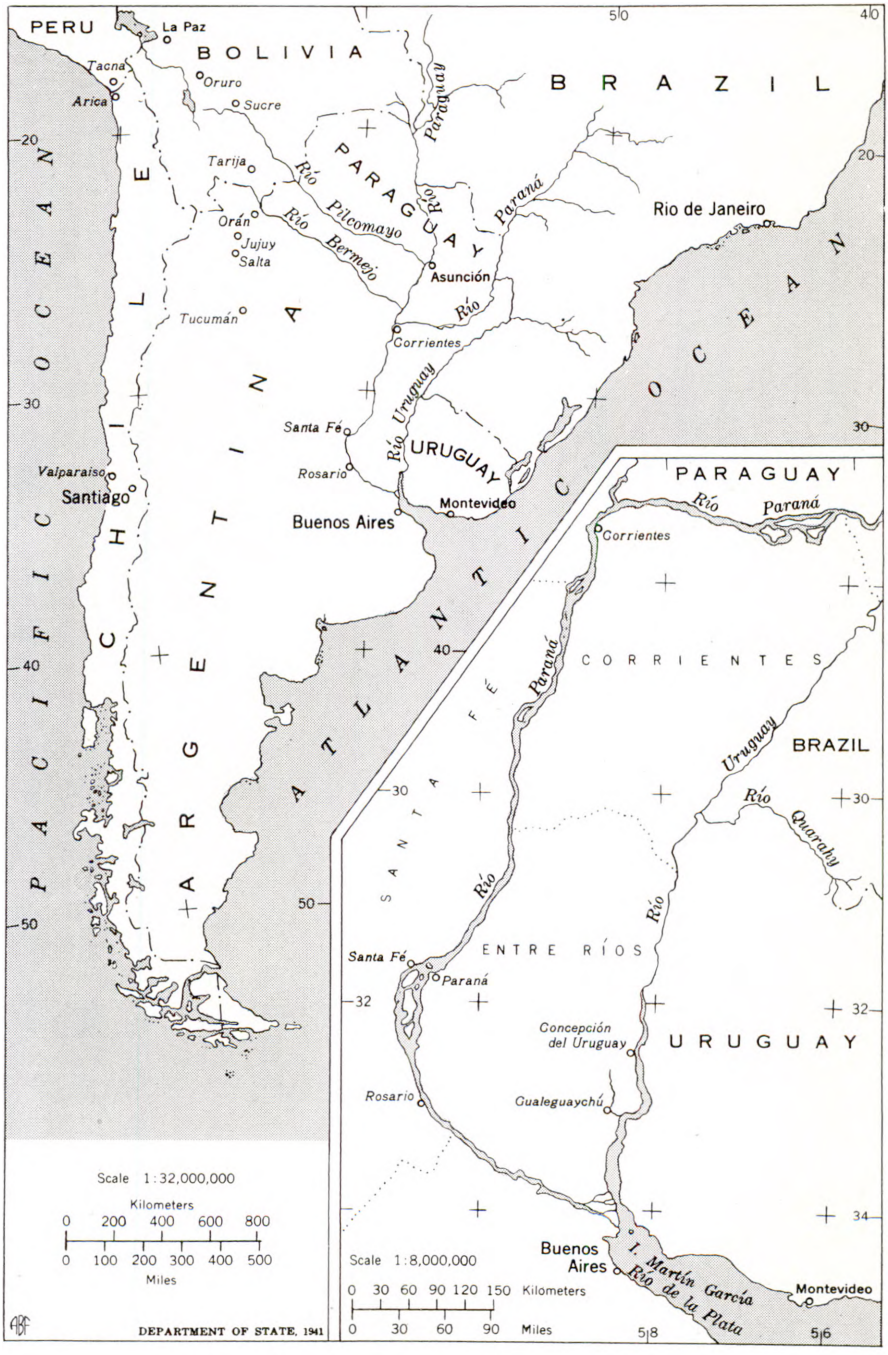

River System of the Rio de la Plata

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San José, Province of Entre Rios, the place of signature of the treaty of July 27, 1853, was the seat of the *estancia* of General Urquiza, about eighteen miles from Concepción del Uruguay. That estate of Urquiza was of enormous extent; a very readable account of it, with illustrations, is in the work last cited (pp. 52–59). Therefrom these few passages are excerpted:

> Throughout the whole distance [fifty miles] since leaving Gualaguaychu we had been driving through his estancia, which extended some ten miles farther, embracing in one unbroken section of Entre Rios several hundred square miles. The soil is highly fertile, and the cattle, horses, mules, and sheep are superior to those of any other province in the Confederation. A part of this estate was tenanted out, and is appropriated almost exclusively to grazing; but a fine field of wheat and thriving nursery of fruit-trees proved its equal adaptation to agriculture.
>
> . . . . . .
>
> His dwelling is built of stone, and in the massive style of the houses of Buenos Ayres. It is of one story, forms a quadrangle of about eighty feet, and contains eight or ten spacious and lofty rooms: from the roof rose two handsome turrets, commanding extensive views of his estancia. In every direction, his own lands extended far beyond the horizon; and this was only one of several estates. Within a few miles of his house he had forbidden his grounds to all sportsmen; consequently, herds of deer, ostriches, and innumerable partridges, large and small, were seen in every direction. I counted as many as fifty ostriches in a flock, some of them in the court of the dwelling, and as tame as barndoor fowls.

The File Papers

The papers in the file of the treaty of July 10, 1853, are the signed original of the treaty, with the English version written on the left pages and the Spanish on the right; the attested resolution of the Senate of June 13, 1854; the duplicate United States instrument of ratification of July 5, 1854; the final instrument of ratification of the Argentine Confederation, with the included text of the treaty written in two columns, the Spanish at the left, dated December 20, 1854; the act or procès-verbal of the exchange of ratifications, in Spanish, also dated December 20, 1854; and the original proclamation of April 9, 1855.

The papers in the file of the treaty of July 27, 1853, include the signed original of the treaty, with the English version written on the left pages and the Spanish on the right; the attested resolution of the Senate of June 13, 1854; the duplicate United States instrument of ratification of June 29, 1854; the final instrument of ratification of the Argentine Confederation, with the included text of the treaty written in two columns, the Spanish at the left, dated December 20, 1854; the act or procès-verbal of the exchange of ratifications, in Spanish, also dated December 20, 1854; and the original proclamation of April 9, 1855.

Later in these editorial notes, under the heading "The Exchange of Ratifications", are printed in translation each of the final Argentine ratifications and one of the two acts of exchange, which are very similar in form.

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The Full Powers

The joint and several full power to the Plenipotentiaries of the United States, Robert C. Schenck, Minister to Brazil, and John S. Pendleton, Chargé d'Affaires to the Argentine Confederation,[1] of April 27, 1852, served for the negotiation and signing of the two treaties of July 10 and 27, 1853. It was of customary form, and its text is printed below, under the heading "Instructions".

No copy of the full power to the Argentine Plenipotentiaries for the treaty of July 10, 1853, is available. Schenck wrote regarding it as follows (D.S., 20 Despatches, Brazil, No. 72, August 22, 1853):

> In the case of the Treaty of San José de Flores, there was but one general Power given to the Argentine Plenipotentiaries, authorizing them to treat alike with the United States, Great Britain and France; and as there could not be an exchange with each, the original was left in custody of the French Plenipotentiary.

It is doubtless to be assumed that that full power was similar in form to the power granted to the same Plenipotentiaries for the treaty of July 27, 1853, the original of which is an enclosure to the despatch last cited and of this simple but quite sufficient form (translation):

> We, the Provisional Director of the Argentine Confederation, being desirous of strengthening, by means of a treaty of friendship, commerce, and navigation, the relations of friendship and commerce that have long existed between the Argentine Confederation and the United States, have conferred full powers on Dr. Don Salvador María del Carril and on Dr. Don José Benjamin Gorostiaga, that they may agree on, conclude, and sign the same with the Plenipotentiaries of the Government of the United States.
>
> Done at San José on the twenty-seventh day of the month of July of the year one thousand eight hundred and fifty-three.
>
> Justo J. de Urquiza

Instructions

John S. Pendleton, of Virginia, was appointed "Chargé d'Affaires of the United States of America to the Argentine Republic" on February 27, 1851 (D.S., 3 Credences, 387); he was furnished with a full power, dated April 21, 1851, "to meet and confer with any person or persons duly authorized by the Government of that Confederation, being furnished with like power and authority, and with him or them to agree, treat, consult, and negotiate, of and concerning general commerce between the United States and the Argentine Confederation, and claims of the citizens of the two countries, respectively, upon the Governments of the Argentine Confederation and of the United States, and all matters and subjects connected therewith; and to conclude and sign a Treaty or Treaties, Convention or Conventions, touching the premises; transmitting the same to the President of the United States for his ratification, by and with the advice and consent of the Senate of the United States" (*ibid.*, 398); and in the covering instruction of May 8 from Secretary of State Webster

[1] Regarding the careers of Schenck and Pendleton, see Dictionary of American Biography, XVI, 427–28; XIV. 422.

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he was directed to consider the instructions to his predecessor (William A. Harris) "as addressed to yourself, so far as they may be applicable to the existing state of affairs, particularly that part of them which relates to a commercial treaty" (D.S., 15 Instructions, Argentina, 46–47). Those instructions to Harris from Secretary of State Buchanan were under date of March 30, 1846, and included the following (*ibid.*, 19–26):

> You are herewith furnished with full powers to conclude a Treaty of Commerce and Navigation with that Republic. The strong sympathy and kindness which now exist between the two Republics, and which I trust may prove permanent, might be greatly strengthened by the more extended commercial relations which such a measure could not fail to produce. It is of great importance to our navigating and commercial interests that they should be placed on a more secure and satisfactory basis than they are at present in their trade with Buenos Ayres. This would seem to be a propitious moment to urge such a treaty.
>
> This Government sincerely believes that such a Treaty would be beneficial to both countries. The United States desire no advantages over other nations. All they wish is a perfect reciprocity in trade. The civilized world is now rapidly advancing towards this enlightened policy; and experience has already proved that its universal prevalence,—so far at least as regards the direct trade,—would be beneficial to all nations. This policy was adopted by us at an early period, and has been presented to the world in the Acts [1] of Congress of March 3d 1815, January 7th 1824 and May 24th 1828.
>
> The two first of these Acts offer to all nations to admit their vessels, laden with their own productions, into the ports of the United States on payment of the same duties of tonnage and impost exacted from our vessels; provided similar advantages shall be extended by them to American vessels. The Act of 1828 proceeds much further. It abolishes all distinctions both in regard to the origin of the productions and the place from which they are imported. It offers to throw wide open the ports of the United States to the vessels of all nations, with their cargoes, no matter to what countries those cargoes may owe their origin, upon the payment of the same duties with our own vessels; provided such nations shall extend similar privileges in their ports to vessels of the United States and their cargoes.
>
> You are authorized to conclude a Treaty of Commerce and Navigation with the Argentine Republic upon the most extended principles of reciprocity: and this the Government of the United States would prefer. Should the Argentine Government, however, decline to treat upon these liberal terms and prefer to confine this reciprocity to the direct trade between the two countries, the President would be satisfied with this basis.
>
> You will find models of a reciprocal Treaty of Commerce in every variety of form in Elliott's American Diplomatic Code, now in the Library of your Legation. This furnishes many precedents, as we have either concluded such treaties, or by means of legislation made commercial arrangements of the same character with almost every civilized nation.
>
> Reasons may exist why the Argentine Government would prefer to treat at Washington rather than at Buenos Ayres. Should this prove to be the case, you will exert yourself to induce it to send full powers to their minister in the United States.

Earlier, but not definitive, instructions on the subject of a treaty had been given on July 15, 1844, by Secretary of State Calhoun to William Brent, Jr., the predecessor of Harris, in these terms (*ibid.*, 6–8):

> A reciprocal Treaty of Commerce with that government is in many respects desirable, but especially to equalize the tonnage duties on vessels of the United States in the ports of that country with those on vessels of Great Britain and of

[1] Respectively in 3 Statutes at Large, 224, and 4 *ibid.*, 2–3, 308–9.

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the Argentine Republic itself which, it is understood, are subjected to a moiety only of those which are exacted from ours. You will accordingly embrace an early opportunity to sound the Buenos Ayrean government upon this subject, and if you should find its disposition to be favorable, you may intimate that it would be agreeable to this government to receive its overtures through the diplomatic representative of Buenos Ayres in the United States and that the negotiation should be carried on at Washington. If, however, they should decidedly prefer Buenos Ayres as the seat of the negotiation, your power will enable you to act for that purpose, but it is not deemed advisable that you should sign a treaty until you shall receive further instructions from this Department.

The conflict of 1851–52 between two notable figures in the history of Argentina, Rosas and Urquiza, made impossible for a time any treaty negotiations at Buenos Aires; this account of events of the period is from Pan American Union, American Nation Series, No. 1, pp. 6–7 (see also Rowe, *op. cit.*, 35–40):

In 1826 Bernardo Rivadavia was elected President of the Confederation. During President Rivadavia's incumbency war broke out with Brazil over the Banda Oriental (Eastern Shore, now Uruguay). The result of the war was the independence of the Banda Oriental. Following the Brazilian war and down to 1861 the country was much disturbed, due to conflict between Buenos Aires and other Provinces, which took several forms.

President Rivadavia's policy had been to establish a strong central government and he became the head of a party called Unitarians. Their opponents bore the name of Federalists, the aim of the latter being to maintain to the highest degree the autonomy of the Provinces. The conflict between these two ideas, the parties not always calling themselves by the names Unitarian and Federalist, but in the main representing these two opposing concepts of government, continued until the presidency of General Roca in 1880. The chief figure on the Federalist side for over 20 years was Juan Manuel de Rosas. Rosas defeated the Unitarian chief, Gen. Juan de Lavalle, and became master of Buenos Aires in 1829. From this date to 1852 he exercised dictatorial power, generally under the title of governor and captain general. The downfall of Rosas was due to a quarrel with his chief supporter, Gen. Justo José de Urquiza, governor of the Province of Entre Rios. In 1851 Urquiza made an alliance with Brazil and Uruguay, and at the head of an army of 24,000 men collected at Montevideo defeated Rosas at Monte Caseros near Buenos Aires, on February 3, 1852. A provisional government was formed under Urquiza, who allowed Buenos Aires to withdraw from the Confederation and to set up an independent government.

Shortly after the fall of Rosas the two instructions following, of April 29, 1852, were sent to Robert C. Schenck, Minister to Brazil, by Secretary of State Webster (D.S., 15 Instructions, Brazil, 199–205, Nos. 15 and 16):

[*Instruction No. 15*]

Since the fall of Rosa's, it seems to have occurred to the principal commercial States that an opportunity would be afforded to obtain an important vent for their productions by means of the mighty rivers which flow through or abound the territories of the Argentine Confederation. The subject has attracted the attention of the British Parliament, and it is understood that the government of Great Britain is about to despatch a Special Minister to Buenos Ayres for the purpose of proposing arrangements with a view to secure the object referred to. From conversations also, which have been had with Mr. Crampton, Her Britannick Majesty's Minister here, it seems that the matter has been officially, brought to the notice of the French government by that of Great Britain and the coöperation of this government has likewise been invited. The President, in view of the well known and uniform policy of the United States is, consequently, disposed to coöperate with other powers in extending the benefits of commercial intercourse to those remote regions. In adopting this course, he is not actuated

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by any desire to seek peculiar advantages for the United States, nor would he consent that other governments should obtain monopolies or exclusive privileges. We are not well advised of the actual State of political affairs in that quarter. The general impression however, is, that as the restrictive policy of Rosas had more or less influence in inciting and directing that hostile opposition to his rule which has resulted in his overthrow, his successor will reverse that policy. How far this impression may prove to be well founded, it would be unsafe to predict when the prejudices of statemen of the Castilian race and other circumstances shall be taken into due consideration. Even if General Urquiza should be disposed to allow a more free admission of foreign products into the Argentine Confederation, he may not be willing to permit them to be conveyed on more or even on equally favorable terms along the Argentine rivers when destined to other countries in which those rivers take their rise or through which they flow in part. Still less could he be expected to permit those rivers to be navigated by foreign vessels, whether propelled by steam or by sails or whether their voyages along the rivers should be limited to points within his own country or extended to the territories of the Uruguay, of Brazil, of Bolivia or of Paraguay. It is well known that Rosas resolutely refused to acknowledge the independence of the latter State, and when he supposed that it was the intention of the administration of President Polk to acknowledge it, officially protested [1] against it in advance through the Minister of the Argentine Confederation accredited to this government. And even if Urquiza should acknowledge that independence, the act would be of no advantage either to foreign powers or to Paraguay herself if he should refuse free access to and from that country by the rivers which empty into the La Plata. As his own territories occupy both banks of some of those rivers, he would have at least a show of right for this refusal, as much, indeed, as Great Britain has for withholding from the United States the free navigation of the St. Lawrence.

In the judgment of the President, however, the probabilities of the adoption of a liberal policy by Urquiza are sufficiently strong and its importance to the interests of the United States is great enough to warrant and require vigilance and activity on our part towards securing any advantages which may be derived therefrom.

This is the more necessary for us in contradistinction to Great Britain, as we have never had any treaty with the Argentine Confederation, whereas Great Britain has long had one [2] with that State from which her navigation and commerce have enjoyed more or less advantages over those of the United States. You will consequently repair to Buenos Ayres and, in concert with Mr. Pendleton the Chargé d'Affaires of the United States at that place, you will propose to the Buenos Ayrean government a treaty of commerce with the United States. Such a treaty, if concluded upon a broad basis such as that of the treaty [3] between the United States and the Republic of Costa Rica of which copies are herewith enclosed, would be sufficient for the purpose. A treaty upon any other basis, however, not inferior to that which Great Britain or other powers may have or may conclude with that government would be acceptable.

A full power authorizing you to act jointly with or, in case of accident, separately from Mr. Pendleton, is herewith transmitted. It is presumed your absence from Rio de Janeiro need not be prolonged beyond months. You will present Mr Coxe [4] as Chargé d'Affaires *ad interim* during that time.

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[1] See the note of the Minister of the Argentine Confederation, Carlos María de Alvear, to Secretary of State Buchanan, of November 1, 1845, in D.S., 1 Notes from the Argentine Legation, pt. 2; printed in Manning, Diplomatic Correspondence of the United States, 1831–1860, I, 300–2. For the attitude of the United States at that time, see *ibid.*, 29–31, 35–36, 40; and for that of Brazil, see *ibid.*, II, 316–17.

[2] Signed at Buenos Aires February 2, 1825; text in 12 British and Foreign State Papers, 29–37.

[3] Of July 10, 1851 (Document 147).

[4] Ferdinand Coxe, of Pennsylvania, was appointed Secretary of Legation at Rio de Janeiro on October 24, 1851, and, after confirmation, on January 15, 1852 (D.S., 3 Credences, 414, 416); but owing to the absence of Coxe on leave, Edward Kent, Consul at Rio de Janeiro, became Chargé d'Affaires ad interim on July 21, 1852 (see D.S., 19 Despatches, Brazil, No. 29, June 23, and No. 31, July 24, 1852).

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You will of course be allowed your travelling expenses to and from Buenos Ayres of which you will keep a separate account to be supported by vouchers when they can be obtained. For those expenses actually incurred, you will draw on this Department, specifying the object on the face of your drafts. A letter [1] from the President of the United States, introducing you to the President of the Argentine Confederation, one [2] from myself to the Minister for Foreign Affairs of that Confederation, and a Special passport which you will no doubt find useful, are also herewith transmitted.

[*Instruction No. 16*]

It is considered probable that, if the independence of Paraguay should be acknowledged by the government of the Argentine Confederation, that Republic will accredit a diplomatic agent to the Argentine government. In view of this contingency, the President has empowered Mr. Pendleton and yourself to conclude a commercial treaty with that Republic. You will accordingly sound the Paraguayan Minister upon the subject, and suggest to him that he apply for powers and instructions to negotiate and conclude such a treaty, if he should not already have been provided with them. If, however, there should be no diplomatic agent of Paraguay at Buenos Ayres during your visit there, you may make overtures on the subject of a treaty to the Paraguayan Minister at Rio de Janeiro, should there be a functionary of that character accredited to the Brazilian government.

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[1] Dated April 29, 1852, recorded in D.S., 3 Credences, 423, and printed below. There is, however, uncertainty and confusion regarding such credentials as were issued. A penciled notation at the foot of the record copy of the letter of President Fillmore to the President of the Argentine Confederation reads thus (*ibid.*):

> The same, mutatis mutandis, to the Presidents of the Oriental Republic of Uruguay and the Republic of Paraguay. A similar letter was sent to John S. Pendleton, Chargé d'Affaires of the United States at Buenos Ayres, accrediting him to the Ministers of Foreign Affairs of the Argentine Confederation of the Oriental Republic of Uruguay and of Paraguay.

What letters were written at the time must remain a matter of doubt; it was not then contemplated that either Schenck or Pendleton would go to Asunción; therefore a letter to the President of Paraguay stating that Schenck had been chosen "to proceed to" that capital would have been inappropriate. In December 1852 Pendleton, unaccompanied by Schenck, opened negotiations at Asunción; and at that time he had no written authorization of any kind except an instruction of April 28, 1852 (printed below).

The second sentence of the quoted notation, if read literally, would mean that one letter, "similar" to those addressed to the Presidents of the three Republics, accredited Pendleton to the Ministers of Foreign Affairs thereof. Obviously, the author of the notation intended to write that there were three letters sent to Pendleton; if three such letters were sent, they must have been signed by the Secretary of State and not by the President; and Pendleton needed no letter to Argentina, for he was there in a diplomatic capacity.

Moreover, Schenck reported in his despatch of September 17, 1852 (cited hereinafter), regarding the negotiations at Montevideo, that "there was some little dilemma and awkwardness occasioned by the fact that M[r] Pendleton and I found ourselves there without Letters of Credence to the head of the Government"; and in the margin to this is written a penciled notation initialed by William Hunter, Jr., then Chief Clerk of the Department of State: "Not necessary or usual as this mission was only *ad hoc*".

[2] Not recorded.

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No special instructions are deemed necessary to enable you to carry into effect the power to Mr. Pendleton and yourself to negotiate a Treaty with the Oriental Republic of the Uruguay.

You will keep an account of your travelling expenses, which must be supported by vouchers when they can be obtained, and will draw on this Department for their amount.

Your despatches to N° 19, inclusive, have been received.

The letter to the President of the Argentine Confederation and the full power with the first (No. 15) of the foregoing instructions were respectively in these forms (D.S., 3 Credences, 423, 422):

Millard Fillmore, President of the United States of America,

To His Excellency
The PRESIDENT OF THE ARGENTINE CONFEDERATION.

GREAT AND GOOD FRIEND! I have made choice of Robert C. Schenck, one of our most distinguished citizens, and, Envoy Extraordinary and Minister Plenipotentiary of the United States to Brazil, to proceed to Buenos Ayres on business connected with the well being of our respective countries. I consequently pray Your Excellency to give credence to whatever Mr. Schenck shall say to you on our part, and most of all when he shall assure Your Excellency of our ardent desire to maintain unimpaired and to strengthen the friendly relations which fortunately exist between the United States and the Argentine Confederation.

And so I pray God to have Your Excellency in his safe and holy keeping.

Written at Washington, the twenty-ninth day of April A.D. 1852.

Your Good Friend.

MILLARD FILLMORE.

By the President:
DANIEL WEBSTER,
Secretary of State.

Millard Fillmore, President of the United States of America,

To all to whom these presents shall come, Greeting:

Know Ye, that for the purpose of confirming between the United States and the Argentine Confederation, or the States now or at any time composing the same, jointly, or severally, perfect harmony and good correspondence, and reposing special trust and confidence in the integrity, prudence and abilities of Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary of the United States to Brazil and of John S. Pendleton, Chargé d'Affaires of the United States to the said Confederation, I hereby invest them jointly or severally with full and all manner of power and authority for and in the name of the United States to meet and confer with any person or persons duly authorized by the government of the said Argentine Confederation, or by the government of either of the States now or at any time composing the same, being invested with like power and authority, and with him or them to agree, treat, consult and negotiate of and concerning general commerce between the United States and the Argentine Confederation or the States now or at any time composing the same jointly or severally, and to conclude and sign a treaty or treaties touching the premises, transmitting the same to the President of the United States for his ratification by and with the advice and consent of the Senate thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed.

Given under my hand at the City of Washington the twenty seventh
(LS) day of April, A.D. 1852, and of the Independence of the United States the seventy-sixth.

MILLARD FILLMORE.

By the President:
DANIEL WEBSTER, *Secretary of State.*

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In the second (No. 16) of the two instructions to Schenck of April 29, 1852, are mentioned two other full powers, respectively for Paraguay and Uruguay; according to the record they were issued and were the same, *mutatis mutandis*, as that for the Argentine Confederation (D.S., 3 Credences, 422); Pendleton wrote later that neither was received (D.S., 8 Despatches, Argentina, No. 24, December 28, 1852; No. 27, April 22, 1853, enclosure, note of February 13, 1853, with enclosure); but in respect of the power for Uruguay, it may be that he was mistaken (D.S., 19 Despatches, Brazil, No. 34, September 17, 1852, enclosure D, of August 6, 1852).

At the same time (April 28, 1852) Pendleton was informed of the joint mission by this instruction (D.S., 15 Instructions, Argentina, 49–50):

> I transmit a copy of an instruction[1] which has been addressed by this Department to Mr. Schenck, the United States Minister to Brazil directing him to proceed to Buenos Ayres, for the purpose of joining you in negotiating a treaty with the Argentine Confederation or with the several States of which it may be or may have been composed. Among the powers of which Mr Schenck is the bearer are two authorizing him and yourself jointly or severally to conclude a Treaty with Paraguay, and another with the Oriental Republic of Uruguay, respectively. If the new Buenos Ayrean Government should recognize the independence of Paraguay, it is presumed that the latter Republic will send a representative to Buenos Ayres, to whom overtures on the subject may be addressed. If, however, this should not take place, Mr. Schenck will make similar overtures to the representative of Paraguay, at Rio de Janeiro, should there be one there. But if there should be no such functionary at Rio, it is not contemplated that either of you should at this juncture proceed to Paraguay for the purpose.
>
> You may consult your own convenience in regard to proceeding to Monte Video, for the purpose of negotiating with the government of the Oriental Republic. Your travelling expenses to Monte Video and back to Buenos Ayres will be allowed. You will keep an account of them which must be supported by vouchers when they can be obtained, and you will draw on this Department for their amount.

Pursuant to the instructions to Schenck and Pendleton four treaties were negotiated and signed, namely: Treaty of Friendship, Commerce, and Navigation with Uruguay, signed at Montevideo August 28, 1852, which did not go into force (D.S., Unperfected S3); Treaty of Friendship, Commerce, and Navigation with Paraguay, signed at Asunción March 4, 1853, which did not go into force (D.S., Unperfected A3); this treaty of July 10, 1853, with the Argentine Confederation; Treaty of Friendship, Commerce, and Navigation of July 27, 1853, with the Argentine Confederation (Document 161).

The Unperfected Treaty with Uruguay of August 28, 1852

The first despatch regarding the joint mission of Schenck and Pendleton was that of the latter, of July 29, 1852, from Buenos Aires, from which these paragraphs (all but the first and a postscript) are excerpted (D.S., 8 Despatches, Argentina, No. 14; printed in Manning, *op. cit.*, I, 529–31):

[1] Perhaps the two instructions to Schenck of April 29, 1852; perhaps only No. 15.

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Mr Schenck arrived at Buenos Ayres on the 14th inst, having left Rio de Janeiro without any delay, after recieving his instructions. He would have reached this place at a still earlier day, but was detained a week in the river, by the prevalence at the time of an unusualy obstinate Pampero, which has interrupted foreign communication very much, for the last four weeks

I called with him on the Minister of Foreign Affairs [1] two days afterwards and his formal presentation to the Supreme Director was arranged for the earliest day when the health of that gentleman—then temporarily disordered would permit.

On the 26th he was recieved by Genl. Urquiza with very unusual demonstrations of satisfaction that the Government of the United States had been so prompt to acknowledge the new order of things and to signify its respectfull and friendly dispositions.

We had a free conversation with the Minister for Foreign Affairs, Peña, in respect to the wishes of the Government of the United States, and its opinions of the best policy of both countries, in fixing by treaty engagements, their future relations.

He said that as to a commercial treaty he was ready at once to discuss its terms—That as regards the free navigation of the La Plata and its tributaries, there were so many seperate powers interested, and entitled to treat in respect to it, that it seemed to him expedient and necessary that an agreement amongst themselves be made in advance of any treaties with foreign states,—and that steps had allready been taken to accomplish such an agreement. He supposes that at an early day all the States of the Argentine will concur in a common policy on that subject—But on both subjects it will be indispensible, before any final and permanent engagements be enterd into that this Government be fully organised

The Convention charged with the duty of preparing a constitution for the Confederation is to meet in the City of Santa Fe [2] on the 20th of August as I have before stated Its session will probably not be very protracted—so that the new Government may be expected to be in operation by the first of November or earlier.[3]

If the event in this respect justifies my present calculations, we shall be able I have very little doubt to send home a treaty in time for the action of the next session of the Senate of the United States.

Mr Schenck and myself will go to Monte Video in four or five days, whence he will probably find it expedient to proceed to his post at Rio, to remain there untill such time as this Government is in a condition to proceed with the negotiations.

He will make his report of what has occurred here or may occur there either from Monte Video or from Rio

I am sure the Government at Washington has acted wisely in giving me the benefit of Mr Schenck's cooperation, for I am well satisfied as I have at various times signified that the interest of the United States is very much concerned in an efficient representation at this court for the next twelve or at any rate nine months.

And this is now more particularly the case, as the English and French Missions are understood to be accompanied by all the circumstances, calculated to have an imposing effect.

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[1] Luis José de la Peña.

[2] Santa Fé, in the Province of the same name, on the Paraná River and not far from Paraná, which is on the other or left bank.

[3] The constitutional convention assembled at Santa Fé on November 20, 1852 (see Rowe, *op. cit.*, 37–41).

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The English and French Ministers are at Monte Video—and have been for some days.[1] I understand they will remain at that place for a week to come—if so we shall meet them at Monte Video and may learn something of their objects and wishes, which may be the subject of a future report.

We know nothing at present; but I suppose there will be a very cordial cooperation between them and ourselves—I suppose the English Government will hardly attempt to continue that very decided advantage which for twenty years she has contrived to maintain over all other foreign States in their relations and intercourse with this country.

This however is certain, that no such attempt can in any respect succeed in the time of Gen[l] Urqueiza.

JULY 30th

Since writing the foregoing—Viz last night—Mr Schenck and myself had a long interview at my house with the Minister of Foreign Affairs

The whole effect of his conversation which was very free, was to confirm the opinions before expressed as to the good feelings of this Government towards the United States and its anxiety to be on the best terms.

It is however certain that nothing more can be done until after the adjournment of the convention of Santa Fe which will be in something less than three months

The two Plenipotentiaries of the United States left Buenos Aires on August 3 and were at Montevideo by August 5; the negotiations there are amply reported by the despatches of Schenck (D.S., 19 Despatches, Brazil, September 4, 1852, unnumbered; No. 34, September 17, 1852, and enclosures; No. 35, September 22, 1852; the despatch of September 17 is in part in Manning, *op. cit.*, II, 418–19). The project of Schenck and Pendleton was in the hands of the Uruguayan Plenipotentiary, Dr. Florentino Castellanos, on August 12; that draft was based on the treaty with Costa Rica of July 10, 1851 (Document 147); the discussions of the four conferences held from August 25 to 28 are protocoled; and while the treaty was not signed and sealed until September 4, it bears the date of the final conference, August 28, 1852. The English version follows (D.S., Unperfected S3, the one of the two originals which is bound with other papers; notes of interlineations are here omitted); it will be seen that the wording of most of the numbered articles was taken from the treaty of 1851 with Costa Rica (Document 147):

Treaty of Friendship, Commerce and Navigation, between the United States of America and the Oriental Republic of Uruguay, concluded at Monte Video, on the twenty eighth day of August, in the year of our Lord one thousand eight hundred and fifty two.

Commercial intercourse having been for some time established between the United States and the Oriental Republic of Uruguay, it seems good, for the security as well as the encouragement of such commercial intercourse, and for the main-

[1] Treaty relations between Great Britain and Uruguay had previously been established; see the Treaty for the Abolition of the Traffic in Slaves signed at Montevideo July 13, 1839, with additional articles, in 28 British and Foreign State Papers, 292–340, and the Treaty of Amity, Commerce, and Navigation signed at London August 26, 1842, with additional article, and with second additional article signed at Montevideo March 8, 1843, in 30 *ibid.*, 343–59; also between France and Uruguay; see the Preliminary Convention of Amity, Commerce, and Navigation signed at Montevideo April 8, 1836, in De Clercq, Recueil des traités de la France, IV, 332–34, and the Convention of Subsidies signed at Montevideo June 12, 1848, in *ibid.*, V, 617–18.

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tenance of good understanding between the United States and the said Oriental Republic of Uruguay, that the relations now subsisting between them should be regularly acknowledged and confirmed by the signature of a treaty of amity, commerce and navigation.

For this purpose they have named their respective plenipotentiaries, that is to say:

The President of the United States, Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary of the United States to Brazil, and John S. Pendleton, Chargé d'Affaires of the United States to the Argentine Confederation;

And His Excellency the President of the Oriental Republic of Uruguay, His Excellency Don Florentino Castellanos, Minister of the Interior and of Foreign Affairs;

Who, after having communicated to each other their full powers, found to be in proper and regular form, have agreed upon and concluded the following articles.

ARTICLE I.

There shall be perpetual amity between the United States and their citizens, on the one part, and the Oriental Republic of Uruguay and its citizens, on the other part.

ARTICLE I [*II*].

There shall be between all the territories of the United States and all the territories of the Oriental Republic of Uruguay a reciprocal freedom of commerce. And it is hereby agreed between the two high contracting parties, with a view to the treating of each other on the footing of the most favored nation, that any favor, exemption, privilege or immunity, whatever, in matters of commerce, which either of them has granted, or may hereafter grant, to the subjects or citizens of any other government, nation or state, shall be extended to the subjects or citizens of the other contracting party.

ARTICLE III.

No higher nor other duties shall be imposed on the importation into the territories of the United States of any article, being of the growth, produce or manufacture of the Oriental Republic of Uruguay, and no higher nor other duties shall be imposed on the importation into the territories of the Oriental Republic of Uruguay of any articles, being the growth, produce or manufacture of the territories of the United States, than are or shall be payable on the like articles, being the growth, produce or manufacture of any other foreign country; nor shall any other or higher duties or charges be imposed in the territories of either of the high contracting parties on the exportation of any articles to the territories of the other, than such as are or may be payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed upon the exportation or importation of any articles, the growth, produce or manufacture of the territories of the United States or of the Oriental Republic of Uruguay to or from the said territories of the United States, or to or from the Oriental Republic of Uruguay, which shall not equally extend to all other nations.

ARTICLE IV.

No higher nor other duties or payments on account of tonnage, of light or harbor dues, of pilotage, of salvage in case either of damage or shipwreck, or on account of any other local charges, shall be imposed in any of the ports of the Oriental Republic of Uruguay, on vessels of the United States, than those payable in the same ports by vessels of the Oriental Republic of Uruguay; nor, in any of the ports of the United States, on vessels of the Oriental Republic of Uruguay, than shall be payable, in the same ports, on vessels of the United States.

ARTICLE V.

The same duties shall be paid on the importation into the territories of the Oriental Republic of Uruguay of any article, being the growth, produce or manu-

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facture of the territories of the United States, whether such importation shall be made in vessels of the Oriental Republic of Uruguay or in vessels of the United States; and the same duties shall be paid on the importation into the territories of the United States of any article, being the growth, produce or manufacture of the Oriental Republic of Uruguay, whether such importation shall be made in vessels of the United States or of the Oriental Republic of Uruguay.

The same duties shall be paid, and the same bounties and drawbacks allowed on the exportation to the Oriental Republic of Uruguay of any articles, being the growth, produce or manufacture of the territories of the United States, whether such exportation be made in vessels of the Oriental Republic of Uruguay or of the United States; and the same duties shall be paid and the same bounties and drawbacks allowed on the exportation of any articles, being the growth, produce or manufacture of the Oriental Republic of Uruguay to the territories of the United States, whether such exportation be made in vessels of the United States or of the Oriental Republic of Uruguay.

ARTICLE VI.

The contracting parties agree to consider and treat as vessels of the United States and of the Oriental Republic of Uruguay all those, which, being furnished by the competent authority with a regular passport or sea-letter, shall under the then existing laws and regulations of either of the two governments, be recognized fully and *bona fide* as national vessels by the country to which they respectively belong.

ARTICLE VII.

All merchants, commanders of ships and others, citizens of the United States, shall have full liberty, in all the territories of the Oriental Republic of Uruguay, to manage their own affairs themselves, or to commit them to the management of whomsoever they please, as broker, factor agent or interpreter; nor shall they be obliged to employ any other persons in those capacities than those employed by citizens of the Oriental Republic of Uruguay, nor to pay them any other salary or remuneration than such as is paid in like cases by citizens of the said Oriental Republic of Uruguay; and absolute freedom shall be allowed, in all cases, to the buyer and seller, to bargain and fix the price of any goods, wares or merchandize, imported into or exported from the Oriental Republic of Uruguay, as they shall see good, observing the laws and established customs of the country. The same privileges, in all respects, shall be enjoyed in the territories of the United States by the citizens of the Oriental Republic of Uruguay.

The citizens of the high contracting parties shall reciprocally receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defence of their just rights; and they shall be at liberty to employ, in all cases, the advocates, attorneys or agents, of whatever description, whom they may think proper, and they shall enjoy, in this respect, the same rights and privileges therein as native citizens.

ARTICLE VIII.

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandize, goods and effects, the succession to estates by will or otherwise, and the disposal of property of every sort and denomination, by sale, donation, exchange, testament, or in any other manner whatsoever, as also the administration of justice, the citizens of the high contracting parties shall reciprocally enjoy the same privileges, liberties and rights as native citizens, and they shall not be charged, in any of these respects, with any higher imposts or duties, than those which are paid or may be paid by native citizens; submitting of course to the local laws and regulations of each country respectively.

If any citizen of either of the two high contracting parties shall die, without will or testament, in any of the territories of the other, the Consul general, or Consul, of the nation to which the deceased belonged, or the representative of such Consul general or Consul in his absence, shall have the right to take possession and charge of the property of the deceased, or to nominate curators to take

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possession and charge thereof, and to settle and dispose of the same, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased; giving immediate notice of the death, and admitting, in the making of the inventory of the property of the deceased, the intervention of the judicial authority of the country.

ARTICLE IX.

The citizens of the United States residing in the Oriental Republic of Uruguay, and the citizens of the Oriental Republic of Uruguay residing in the United States, shall be exempted from all compulsory military service whatsoever, either by sea or by land, and from all forced loans or military exactions or requisitions; and they shall not be compelled, under any pretext whatsoever, to pay other ordinary charges, requisitions or taxes, greater than those that are paid by native citizens of the contracting parties respectively.

ARTICLE X.

It shall be free for each of the two high contracting parties to appoint consuls for the protection of trade, to reside in any of the territories of the other party; but before any consul shall act as such, he shall, in the usual form, be approved and admitted by the government to which he is sent; and either of the high contracting parties may except from the residence of consuls such particular places as they judge fit to be excepted. The diplomatic agents and consuls of the Oriental Republic of Uruguay shall enjoy, in the territories of the United States, whatever privileges exemptions and immunities are or shall be granted to agents of the same rank, belonging to the most favored nation; and in like manner, the diplomatic agents and consuls of the United States in the territories of the Oriental Republic of Uruguay shall enjoy, according to the strictest reciprocity, whatever privileges, exemptions and immunities are or may be granted, in the Oriental Republic of Uruguay, to the diplomatic agents and consuls of the most favored nation.

ARTICLE XI.

The archives and papers of the consulates of the respective governments shall be respected inviolably; and, under no pretext whatever, shall any magistrate, or any of the local authorities, seize or in any way interfere with them.

The consuls and vice-consuls of the two countries, respectively, are authorized to require the assistance of the local authorities, for the search, arrest, detention and imprisonment of deserters from the ships of war and merchant vessels of their nation. For this purpose, they shall apply to the competent tribunal or officer, and shall, in writing, demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or any other official documents, that such individuals formed part of the crews; and, this reclamation being thus substantiated, the surrender shall be made without delay. Such deserters, when arrested, shall be placed at the disposal of the said consuls or vice consuls and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belonged or sent back to their own country. But, if not so restored or sent back, within three months from the day of their arrest, they shall be set at liberty, and shall not be arrested again for the same cause. However, if a deserter shall be found to have committed any crime, such surrender shall be delayed until the tribunal, before which his case shall be pending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XII.

For the better security of commerce, between the citizens of the United States and the citizens of the Oriental Republic of Uruguay, it is agreed, that if, at any time, any interruption of friendly intercourse, or any rupture, should unfortunately take place between the two high contracting parties, the citizens of either of them, who may be within any of the territories of the other, shall, if residing upon

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the coasts, be allowed six months, and, if in the interior, a whole year, to wind up their accounts and dispose of their property; and a safe-conduct shall be given them to embark at the port which they themselves shall select; and, even in the event of a rupture, all such citizens of either of the two high contracting parties, who are established in any of the territories of the other, in the exercise of any trade or special employment, shall have the privilege of remaining and of continuing such trade and employment therein, without any manner of interruption, in the full enjoyment of their liberty and property, as long as they behave peaceably and commit no offence against the laws; and their goods and effects, of whatever description they may be, whether in their own custody, or entrusted to individuals, or to the state, shall not be liable to seizure or sequestration, nor to any other charges or demands than those which may be made upon the like effects or property belonging to the native citizens of the country, in which such citizens may reside. In the same case, debts between individuals, property in public funds and shares of companies, shall never be confiscated, sequestered nor detained.

ARTICLE XIII.

The citizens of the United States and the citizens of the Oriental Republic of Uruguay, respectively, residing in any of the territories of the other party, shall enjoy, in their houses, persons and properties, the full protection of the government. They shall not be disturbed, molested or annoyed, in any manner, on account of their religious belief, nor in the proper exercise of their peculiar religion, either within their own private houses, or in churches, chapels or other places appointed for public worship; which places of worship they shall be at liberty to build and maintain in convenient situations interfering in no way with, but respecting the religion and customs of the country in which they reside.

Liberty shall also be granted to the citizens of either of the two high contracting parties, to bury their dead, who may die in the territories of the other, in burial places of their own, which, in the same manner, may be freely established and maintained; nor shall the funerals or sepulchres of the dead be disturbed, in any way, or upon any account.

ARTICLE XIV.

With a view to treating and agreeing, hereafter, upon such arrangements as may tend still better and further to the improvement of their mutual intercourse, and to the advancement of the interests of their respective citizens, it is agreed by the two high contracting parties, that at any time after the expiration of twelve years from the date of the exchange of ratifications of the present treaty, either of them shall have the right to give notice to the other party, of its intention to terminate the same; and at the expiration of one year, from the time when such notice shall have been received by either party from the other, this treaty and all the stipulations therein contained, shall cease to be binding.

ARTICLE XV.

The present treaty shall be ratified, and the ratifications exchanged at Washington or at Monte Video, within nine months, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Monte Video, this twenty eighth day of August, in the year of Our Lord one thousand eight hundred and fifty two.

ROBERT C. SCHENCK [Seal]
JN° PENDLETON [Seal]
FLORENTINO CASTELLANOS [Seal]

It is agreed between the two high contracting parties, that, when the arrangements of the Oriental Republic with other states having territories bordering or lying on the river Uruguay and on the other interior rivers of the Oriental Repub-

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lic of Uruguay, shall place the said Republic in condition to enter into any stipulation, which shall embrace the navigation of the interior rivers, then the following shall be added to the foregoing treaty as an

ADDITIONAL ARTICLE.

The citizens or subjects of the United States and of the Oriental Republic of Uruguay, respectively, shall have liberty, freely and securely, to come, with their ships and cargoes, to all places, ports and rivers, in the territories of either country to which other foreigners, or the ships or cargoes of any other foreign state or nation are or may be permitted to come; to enter into the same, and to remain and reside in any part thereof, respectively; also to hire and occupy houses and warehouses for the purposes of their commerce and residence; and generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce; subject always to the general laws and statutes of the two countries respectively.

In like manner, the respective ships of war and post-office or passenger packets of the two countries, shall have liberty, freely and securely to come to all harbors, rivers and places, to which other foreign ships of war and packets are, or may be permitted to come; to enter into the same, to anchor and to remain there and refit; subject, always, to the laws and statutes of the two countries, respectively.

It is understood that this additional article is to have no present effect. But if, within one year from the date of the foregoing treaty, the Oriental Republic desires to adopt it and make it a part of the treaty, in the terms here expressed, in that case, the said Republic shall give notice to the United States, and thereupon due proclamation shall be made by both governments that it is to be taken and considered as a part of the treaty. But if no such notice be given by the Oriental Republic, within one year, then this additional article is to remain forever of no avail; but the subject thereof shall be open for further negotiation.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done, together with the foregoing treaty, at Monte Video, this twenty eighth day of August, in the year of Our Lord one thousand eight hundred and fifty two.

ROBERT C. SCHENCK [Seal]
JN° PENDLETON [Seal]
FLORENTINO CASTELLANOS [Seal]

The treaty with Uruguay was sent to the Senate by President Fillmore with his message of December 7, 1852, without accompanying papers. Action by that body was delayed. On June 13, 1854, the treaty was unanimously accepted by the Senate subject to an amendment which enlarged from nine to thirty months from date of signature the time for the exchange of ratifications, or until February 28, 1855 (see Executive Journal, IX, 7, 9, 32, 144, 181, 333). Ratification by President Pierce followed on July 5, 1854; and a resolution of the Senate of August 9, 1856, gave consent to the exchange at any time prior to August 5, 1859 (see *ibid.*, X, 134, 137–38); but the Uruguayan Government did not ratify the treaty and accordingly it failed to go into force.

THE UNPERFECTED TREATY WITH PARAGUAY OF MARCH 4, 1853

Conditions in Argentina were unsettled; efforts made at the time to compose the controversy which had arisen between the Province of Buenos Aires and the other thirteen Provinces were fruitless (for reports of the political and military situation during the period from August 1852 to July 1853, see Manning, *op. cit.*, I, 531–56, *passim*).

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The official residence of General Urquiza as Provisional Director of the Argentine Confederation (the thirteen Provinces) was established at Paraná, Entre Rios, in September 1852 (see Rowe, *op. cit.*, 37–40); Pendleton left for that capital on the following November 25; his despatch written there under date of December 5, 1852, included these passages (D.S., 8 Despatches, Argentina, No. 23; in part in Manning, *op. cit.*, I, 537–38):

On the 25th of November I left Buenos Ayres with Sir Charles Hotham,[1]—on the English War Steamer "The Locust"—for this place—establishd as I have previously informed you—since the 11th of September, as the official residence of the provisional Supreme Director of the Argentine Confederation.

The French Minister Plenipotentiary the Chevalier St George, followd on, the day after, and is now here, also.

Both these gentlemen, in pursuance of the objects of their Special Mission to the States of the La Plata, proceed hence in two or three days at most, to Assumption, the Capitol of the Republic of Paraguay.

They are already preceded by Ministers Plenipotentiary, from the Governments of Sardinia, Brazil and Buenos Ayres,[2]—the object of the whole being, to negotiate with the Government of Paraguay—now acknowledged to be independent by all these States—in respect to the free navigation of the Rio de la Plata, and its tributaries; And to make such treaties of commerce and friendship, as may be most advantageous to their respective Constituents.

I take it for granted, that the Govt of Brazil, will endeavor to gain some special privileges; in consideration of its more immediate connexions, and neighborhood, with the States of the La Plata. I have no information directly of any such purpose in this particular case, but such we know to be its general policy, and pretensions.

England, France, and the United States—and I suppose Sardinia—have precisely the same objects; and will be content with equal, and identical terms. My instructions heretofore recieved authorise me to treat with Paraguay, separately, or in conjunction with Mr Schenck—but do not require me to proceed to Paraguay for that purpose at this time, or rather at the time of their date.

There is no diplomatic or other representative of Paraguay at Rio, or at Buenos Ayres, or at this place—for it has been the policy of that country notwithstanding its extraordinary opulence in natural resources, to avoid all sort of intercourse,

[1] Plenipotentiary of Great Britain.

[2] Pendleton here refers to missions from the Governments of Brazil and Buenos Aires, besides those of the three European powers. In his despatches from Asunción he makes no mention of any but the latter group.

The independence of Paraguay was formally recognized by Brazil on September 14, 1844; and there were various international acts of Brazil and Paraguay signed during the period 1844–58; but none, it seems, in the years 1851–54 (see Perez Uribe, Coleccion de tratados, I, 319–80; also Manning, *op. cit.*, II, 496–507).

Under the then existing circumstances it seems extraordinary that there was at the time any mission from the Government of Buenos Aires to the Government of Paraguay. Some months earlier (July 1852) the independence of Paraguay had been formally recognized by the Argentine Confederation (see Perez Uribe, Coleccion de tratados, I, 45–54), and on July 15, 1852, a Treaty of Commerce, Navigation, and Limits between the Argentine Confederation and Paraguay had been signed at Asunción (*ibid.*, 40–45). By Article 15 of that treaty the ratifications thereof were to be exchanged at Corrientes, but the exchange took place at Asunción on September 14, 1852 (see *ibid.*, 698).

For the Treaty of Peace, Friendship, Commerce, and Navigation of July 29, 1856, between the Argentine Confederation and Paraguay, and the protocol of the same date, see *ibid.*, 54–64. The ratifications of that treaty were exchanged at Paraná November 6, 1856 (*ibid.*, 699).

The cited international acts of the Argentine Confederation and Paraguay are also printed in Tratados, convenciones, protocolos, actos y acuerdos internacionales, IX, 69–103.

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with other States—and as yet its new arrangements under a more rational system, have not been made.

And if there were any such agent, he would not be permitted to treat on this subject by the President of Paraguay.

If it were at all likely—as it is not—that such representatives, would at any time or under any circumstances, be allowed by the Executives of any of these States, to enter into such negotiation with foreign representatives, at any other places than at their own seats of Government respectively,—Still it would be absolutely certain not to occur on this occasion—for Since England, France, Brazil, Sardinia, and other States,[1] have despatchd special missions to Paraguay, for the express purpose of making these treaties, it is altogether probable, that Paraguay would not only expect, and require as much from the U States, but would feel that she had not been treated with proper consideration by that Government, if *it* should not be represented in the general concurence of so many representatives of Foreign States at one and the same time—And the effect might be, and most probably would be, that we should not only get no treaty *now*, but that we should be recieved with very little favor when we make a future application on that subject The English Minister urges me very much to go with him—believing as he does, that the General object, will be very essentialy promoted, by the presence & co-operation of a representative of the Government of the United States—in which opinion, he is undoubtedly correct.

Besides—as will hereinafter be seen—the condition of the Argentine Confederation, is such at this moment; and will remain such for at least three months to come, that nothing whatever can be done with it, either in the matter of a treaty, or any other business, in the hands of this legation. I have therefore determined to proceed to Paraguay, and have written to Mr Schenck to that effect—so that if his occupations at Rio will permit, and his instructions require, he may proceed to join us at Asumcion, by the most convenient route.

Had I waited for an answer from him, the time would have passd, within which it was most likely any thing could have been accomplished—and during which I could without any possible inconvenience to the public service, be absent from Buenos Ayres.

We expect to be able to return to this place or to Buenos Ayres, by the first of March—and I think it probable with treaties of a very satisfactory character.

This at least will be ensured by *my* going—if any other power gets a treaty the U States will get certainly as good a one—And this I presume will commend the decision I have made, to your entire approbation.

. . . . . .

Genl Urquiza is not at this place at present. . . . We shall probably not see him before we leave for Paraguay.

Whenever he is ready to treat—that is, as soon as the government is organised,—he will give me—should I remain here—just such a treaty as I shall ask. That is absolutely certain.

And I think I may safely promise, that by the autumn of the ensuing year (1853) I will have the treaty ready to be submitted to the first session of the Senate, under the new Administration.

Pendleton, unaccompanied by Schenck, was at Asunción from about the middle of December 1852 until March 14, 1853. The negotiations of the period were out of the ordinary; four Plenipotentiaries, representing respectively three European powers [2] and the United States, were at Asunción to treat with the Government of Paraguay on the same subjects; the four Envoys made common cause and presented for consideration a single project, that drafted by the British Plenipotentiary; the "real negotiator" for Paraguay was the President, Carlos Antonio López, whose son, Francisco Solano López, was "nomi-

[1] The reference to "other States" is obscure. See the preceding footnote.

[2] For France, the Chevalier de Saint-Georges; for Great Britain, Captain Sir Charles Hotham, R.N.; and for Sardinia, Marcello Cerruti.

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nally the Plenipotentiary". Pendleton had a special difficulty because of the fact that he was without anything in the nature of written authorization [1] other than the instruction of Secretary of State Webster of April 28, 1852 (printed above). The proceedings, which included a formal and ceremonial recognition of the independence and sovereignty of the Republic of Paraguay on February 28, 1853,[2] are reported in Pendleton's despatches No. 24, of December 28, 1852, from Asunción; No. 25, of March 4, 1853, also from Asunción; and No. 27, of April 22, 1853, from Buenos Aires, with enclosures [3] (D.S., 8 Despatches, Argentina; in part in Manning, *op. cit.*, I, 539–40, and X, 104–11). The negotiations resulted in the signing on March 4, 1853, of four treaties between Paraguay on the one part and the United States, France, Great Britain, and Sardinia respectively on the other, all of like tenor except for the inclusion in the treaty with Great Britain of an article regarding the slave trade.[4]

[1] See the unusual wording of the preamble, below, in the phrase "having communicated competent authorities".

The absence of a full power was also noticed by the President of Paraguay in his letter to the President of the United States dated March 12, 1853 (D.S., 1 Notes from the Paraguayan Legation; this is not, as supposed, the full power printed in Manning, *op. cit.*, X, 103–4; see also *ibid.*, 107, footnote 2). That letter was answered by President Pierce on October 8, 1853 (D.S., 2 Communications to Foreign Sovereigns and States, 251–52). The presidential communication and a certified copy of the full power of April 27, 1852, were sent to Pendleton with the instruction of Secretary of State Marcy of October 8, 1853, to be forwarded to the Minister of Foreign Affairs of Paraguay (D.S., 15 Instructions, Argentina, 62–63; Manning, *op. cit.*, I, 43–44); but it seems probable that that instruction was not received by Pendleton, for while further instructions were sent to him until as late a date as March 27, 1854 (D.S., 15 Instructions, Argentina, 65), his last despatch is dated at Buenos Aires on December 2, 1853, when he wrote that he supposed it to be his duty to return home at once, which he contemplated doing by the first convenient conveyance (D.S., 8 Despatches, Argentina, No. 36; in part in Manning, *op. cit.*, I, 564).

Whether the letter of President Pierce of October 8, 1853, and the certified copy of the previous full power to Pendleton were transmitted to the Government of Paraguay is uncertain. No further reference to those papers has been observed in either instructions or despatches.

[2] Written declarations of recognition were delivered concurrently by the Plenipotentiaries of the United States, France, Great Britain, and Sardinia on February 28, 1853. "It was an occasion of great ceremony and parade, civil and military. The flag of each of the contracting States was saluted with twenty one guns, immediately upon the delivery of the written recognition by its representative and the salute was returned by the English and French from their steamers on the spot" (D.S., 8 Despatches, Argentina, No. 27, April 22, 1853). The declaration on the part of Sardinia is printed in Traités publics de la royale maison de Savoie, VIII, 30.

Recognition by the United States had previously been accorded, on April 27, 1852, with the issuance to Schenck and Pendleton of the full power of that date to negotiate a commercial treaty with Paraguay (D.S., 3 Credences, 422; cf. Moore, Digest, I, 91).

[3] See also, though it is not of much significance, a letter of Pendleton to Senator Robert M. T. Hunter, of Virginia, of March 7, 1853, in Library of Congress, 29 Marcy Papers, 38820–21.

[4] For the British treaty in English and Spanish, see 42 British and Foreign State Papers, 19–30; for the French treaty, in French, see De Clercq, Recueil des traités de la France, VI, 303–8; for the Sardinian treaty, in French, see Raccolta dei trattati e delle convenzioni commerciali, 443–49.

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The only one of the four treaties which did not go into force was that with the United States, the English version of which, as signed, follows (D.S., Unperfected A3; the Spanish version, with omission of the heading and preamble, is in Perez Uribe, Coleccion de tratados, I, 513–19):

A Treaty of Friendship, Commerce and Navigation between the Governments of the United States of North America, and of the Republic of Paraguay, concluded and signed in the City of Assumption, the Capital of the Republic of Paraguay, on the Fourth day of March, in the year of our Lord One thousand eight hundred and fifty three.

In the name of the most holy Trinity.

The Governments of the two Republics of the North American Union, and of Paraguay in South America, being mutually disposed to cherish more intimate relations and intercourse than those which have heretofore subsisted between them, and believing it to be of mutual advantage to adjust the conditions of such relations by signing a Treaty of Friendship, Commerce and Navigation;—for that object have nominated their respective Plenipotentiaries, that is to say:

His Excellency the President of the United States has nominated John S. Pendleton, Chargé d'Affaires of the United States near the Government of the Argentine Confederation;

And His Excellency the President of the Republic of Paraguay has nominated the Paraguayan Citizen, Francisco Solano Lopez, Brigadier General in Chief of the National Army;

Who after having communicated competent authorities have agreed upon, and concluded the following Articles.

ARTICLE I.

There shall be perfect peace and sincere friendship between the Government of the United States, and the Government of the Republic of Paraguay, and between the citizens of both States without exception of persons or of places. The high contracting parties shall use their best endeavours that this friendship and good understanding may be constantly and perpetually maintained.

ARTICLE II.

The Republic of Paraguay in the exercise of the sovereign right which pertains to her, concedes to the Merchant flag of the citizens of the United States, the free navigation of the River Paraguay, as far as Assumption, the Capital of the Republic; and of the right side of the Paraná, from where it belongs to her as far as the City of Encarnacion. They shall be at liberty, with their ships and cargoes, freely and securely to come to, and to leave all the places and ports which are already mentioned; to remain and reside in any part of the said territories; hire houses and warehouses, and trade in all kinds of produce, manufactures and merchandize of lawful commerce, subject to the usages and established customs of the country. They may discharge the whole or part of their cargoes at the ports of Pilar, and where commerce with other nations may be permitted, or proceed with the whole or part of their cargo to the port of Assumption, according as the Captain, owner, or other duly authorized person shall deem expedient.

In the same manner, shall be treated and considered such Paraguayan citizens as may arrive at the ports of the United States with cargoes in Paraguayan or North American vessels.

ARTICLE III.

The two high contracting parties hereby agree, that any favor, privilege or immunity whatever, in matters of commerce or navigation which either contracting party has actually granted, or may hereafter grant to the citizens or subjects of any other State, shall extend, in identity of cases and circumstances to the citizens of the other contracting party, gratuitously, if the concession in favor of

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that other State shall have been gratuitous, or in return for an equivalent compensation, if the concession shall have been conditional.

ARTICLE IV.

No other or higher duties shall be imposed on the importation or exportation of any article of the growth, produce or manufacture of the two contracting states, than are or shall be payable on the like article being the growth, produce or manufacture of any other foreign country. No prohibition shall be imposed upon the importation or exportation of any article of the growth, produce or manufacture of the terrritories of either of the two contracting parties into the territories of the other, which shall not equally extend to the importation or exportation of similar articles to the territories of any other nation.

ARTICLE V.

No other or higher duties or charges on account of tonnage, light or harbour dues, pilotage, salvage in case of damage or shipwreck or any other local charges, shall be imposed in any of the ports of the territories of the Republic of Paraguay on North American Vessels than those payable in the same ports by Paraguayan vessels; nor in the ports of the territories of the United States on Paraguayan vessels, than shall be payable in the same ports by North American vessels.

ARTICLE VI.

The same duties shall be paid upon the importation and exportation of any article which is or may be legally importable or exportable into the dominions of the United States and into those of Paraguay, whether such importation or exportation be made in North American or Paraguayan vessels.

ARTICLE VII.

All vessels which according to the laws of the United States are to be deemed North American vessels, and all vessels which according to the laws of Paraguay are to be deemed Paraguayan vessels, shall, for the purposes of this Treaty be deemed North American vessels and Paraguayan vessels, respectively.

ARTICLE VIII.

North American citizens shall pay in the territories of the Republic of Paraguay the same import and export duties which are established or may hereafter be established for Paraguayan citizens. In the same manner the latter shall pay in the United States, the duties which are established or may hereafter be established for North American citizens.

ARTICLE IX.

All Merchants, Commanders of Ships and others, the citizens of each country respectively, shall have full liberty, in all the territories of the other, to manage their own affairs themselves, or to commit them to the management of whomsoever they please, as Agent, Broker, Factor, or Interpreter; and they shall not be obliged to employ any other persons than those employed by natives, nor to pay to such persons as they shall think fit to employ, any higher salary, or remuneration than such as is paid in like cases, by natives.

The citizens of the United States in the territories of Paraguay, and the citizens of Paraguay in the United States, shall enjoy the same full liberty which is now, or may hereafter be enjoyed by natives of each country respectively, to buy from and sell to whom they like, all articles of lawful commerce, and to fix the prices thereof as they shall see good, without being affected by any monopoly, contract, or exclusive privilege of sale or purchase; subject however, to the general ordinary contributions or imposts established by law.

The citizens of either of the two contracting parties in the territories of the other, shall enjoy full and perfect protection for their persons and property;

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and shall have free and open access to the Courts of Justice for the prosecution and defence of their just rights; they shall enjoy in this respect the same rights and privileges as native citizens; and they shall be at liberty to employ in all causes, the Advocates, Attorneys or Agents of whatever description, whom they may think proper.

ARTICLE X.

In whatever relates to the police of the ports, the lading and unlading of ships, the warehousing and safety of merchandize, goods and effects, the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination by sale, donation, exchange or testament, or in any other manner whatsoever, as also with regard to the administration of justice, the citizens of each contracting party shall enjoy in the territories of the other, the same privileges, liberties and rights, as native citizens; and shall not be charged, in any of these respects, with any other or higher imposts or duties than those which are or may be paid by native citizens: subject always to the local laws and regulations of such territories.

In the event of any citizen of either of the two contracting parties dying without Will or Testament, in the territories of the other contracting party, the Consul General, Consul or Vice Consul of the Nation to which the deceased may belong, or in his absence, the Representative of such Consul General, Consul or Vice Consul, shall, so far as the laws of each country will permit, take charge of the property which the deceased may have left, for the benefit of his lawful heirs and creditors, until an executor or administrator be named by the said Consul General, Consul or Vice Consul or his Representative.

ARTICLE XI.

The citizens of the United States residing in the territories of the Republic of Paraguay, and the citizens of the Republic of Paraguay residing in the United States, shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans, or military exactions or requisitions; and they shall not be compelled to pay any charges, requisitions or taxes, other or higher than those that are or may be paid by native citizens.

ARTICLE XII.

It shall be free for each of the two contracting parties to appoint Consuls for the protection of trade, to reside in the territories of the other party; but before any Consul shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent; and either of the two contracting parties may except from the residence of Consuls, such particular places as either of them may judge fit to be excepted.

The Diplomatic Agents and Consuls of the United States in the territories of the Republic of Paraguay, shall enjoy whatever privileges, exemptions and immunities, are or may be there granted to the Diplomatic Agents and Consuls of any other nation whatever; and in like manner, the Diplomatic Agents and Consuls of the Republic of Paraguay in the United States, shall enjoy whatever privileges, exemptions and immunities, are or may be there granted to Agents of any other nation whatever.

ARTICLE XIII.

For the better security of commerce between the citizens of the United States, and the citizens of the Republic of Paraguay, it is agreed, that if, at any time, any interruption of friendly intercourse, or any rupture should unfortunately take place between the two contracting parties, the citizens of either of the said contracting parties who may be established in the territories of the other, in the exercise of any trade or special employment, shall have the privilege of remaining and continuing such trade or employment therein, without any manner of interruption, in full enjoyment of their liberty and property, as long as they behave peaceably and commit no offence against the laws; and their goods and effects of whatever description they may be, whether in their own custody or entrusted

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to individuals or to the State, shall not be liable to seizure or sequestration, or to any other charges or demands than those which may be made upon the like effects or property belonging to native citizens. If, however, they prefer to leave the country, they shall be allowed the time they may require to liquidate their accounts and dispose of their property, and a safe conduct shall be given them to embark at the ports which they shall themselves select. Consequently, in the case referred to of a rupture, the public funds of the Contracting states shall never be confiscated, sequestered or detained.

ARTICLE XIV.

The citizens of either of the two contracting parties, residing in the territories of the other, shall enjoy, in regard to their houses, persons and properties, the protection of the Government, in as full and ample a manner as native citizens.

In like manner, the citizens of each contracting party shall enjoy in the territories of the other, full liberty of conscience, and shall not be molested on account of their religious belief; and such of those citizens as may die in the territories of the other party, shall be buried in the public cemeteries or in places appointed for the purpose with suitable decorum and respect.

The citizens of the United States residing within the territories of the Republic of Paraguay, shall be at liberty to exercise in private and in their own dwellings, or within the dwellings or offices of the Consuls or Vice Consuls of the United States their religious rites, services and worship, and to assemble therein for that purpose without hindrance or molestation.

ARTICLE XV.

The present Treaty shall be in force during six years, counted from the day of the exchange of the Ratifications; and if a year before the expiration of that term; neither the one nor the other contracting party should announce, by an official declaration, it's intention to put an end to the effect of the said Treaty, it shall continue for a year longer, so that in this case it shall cease to be binding at the expiration of seven years, counted from the above mentioned day of the exchange of the Ratifications.

The Paraguayan Government shall be at liberty to address to the Government of the United States, or to it's Representative in the Republic of Paraguay, the official declaration agreed upon in this article.

ARTICLE XVI.

The present Treaty shall be ratified by His Excellency the President of the United States of North America, and by His Excellency the President of the Republic of Paraguay, and the Ratifications shall be exchanged at Assumption, the Capital of the Republic of Paraguay within the term of Fifteen months from this date, or earlier if possible.

In Witness Whereof, the respective Plenipotentiaries have signed it and affixed thereto their seals.

Done at Assumption this Fourth day of March in the year of our Lord one thousand eight hundred and fifty three.

JN° PENDLETON [Seal]

FRANCISCO S. LOPEZ [Seal]

The treaty with Paraguay was sent to the Senate with the presidential message of December 12, 1853, without accompanying papers (Executive Journal, IX, 180–81). In the English version of the treaty the word "North" is written eleven times [1] with reference to this country (title, preamble, Articles 2, 5, 6, 7, 8, and 16; in all but two instances as part of "North American"; similar usage is not

[1] In the Spanish version there are ten instances of "Norte".

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infrequent in the despatches of Pendleton); by the Senate resolution of advice and consent of May 1, 1854 (see *ibid.*, 216, 316–19), were proposed thirty-two amendments to the treaty, twelve of which were framed as corrections of those mistakes of style; eighteen of the other amendments, with quite unnecessary precision, made "United States" read "United States of America" (preamble, Articles 1, 2, 5, 6, 7, 8, 9, 11, 12, 13, and 14; compare the wording above of the treaty with Uruguay, accepted by the Senate on June 13, 1854); one amendment (Article 16) enlarged the time for the exchange of ratifications from fifteen to twenty-four months from date of signature, or until March 4, 1855; only the remaining amendment was of some substance; thereby the first paragraph of Article 15 [1] would have read as follows:

> The present Treaty shall be in force during six years, counted from the day of the exchange of the Ratifications; and further until the end of twelve months after the government of the United States on the one part, or that of the Paraguayan government on the other shall have given notice of its intention of terminating the same.

The treaty with Paraguay was ratified by President Pierce, subject to the Senate amendments, on June 1, 1854. It had been ratified by the President of Paraguay on March 12, 1853. Efforts made in 1854 to effect exchange of ratifications at Asunción failed. Similar efforts made in 1856, after passage on August 9 of that year of a Senate resolution enlarging the period for the exchange of ratifications to any time prior to August 5, 1859 (see Executive Journal, X, 134–35, 137), were also unsuccessful, the Senate amendments being assigned as one reason (see Manning, *op. cit.*, X, 36–38, 142–48, 164–65, 171–80). There were, however, other and more important questions then pending between the two Governments (see Moore, International Arbitrations, II, 1485–91; and for the relevant correspondence, see House Executive Document No. 2, 35th Congress, 1st session, serial 942, pp. 35–50).

On February 4, 1859, a treaty between the United States and Paraguay, of terms very similar to those of the treaty of March 4, 1853, was signed at Asunción, the ratifications of which were duly exchanged on March 7, 1860 (Treaty Series No. 272; 12 Statutes at Large, 1091–99). That treaty of 1859 is still (January 1, 1941) in force.

Not long before the signature of the treaty with Paraguay of March 4, 1853, it was proposed to associate Lieutenant Thomas Jefferson Page,[2] U.S.N., with the mission of Schenck and Pendleton to that Republic. A full power for that purpose running jointly and severally to the three Plenipotentiaries was issued under date of January 31, 1853 (D.S., 3 Credences, 446), and to Lieutenant Page were given

[1] In his cited despatch of April 22, 1853, Pendleton wrote that Article 16, the "final" article, "was written out by Lopez himself and insisted on just as it stands". The reference is probably to Article 15, which is numbered 16 in the British treaty, although it is not strictly "final" in either text.

[2] Regarding the career of Page, see Dictionary of American Biography, XIV, 140–41.

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the following instructions by Secretary of State Everett (D.S., 3 Special Missions, 18–20, February 1, 1853):

It has occurred to the President that your proposed visit to the capital of Paraguay with the vessel under your command, will afford a favorable opportunity for negotiating a Treaty of Commerce with the government of that Republic. He has accordingly determined to avail himself of your services, for the purpose for which you will herewith receive a full power. You will notice that you are therein associated jointly and severally with Mr. Schenck, our Minister at Rio de Janeiro and Mr. Pendleton, our Chargé d'Affaires at Buenos Ayres. In May, last, those gentlemen were authorized and instructed to conclude such a Treaty with any agent of Paraguay empowered for that purpose who might present himself at either Buenos Ayres or Rio de Janeiro, but according to our last intelligence from them, no such opportunity had occurred or was likely to occur. They have not been directed to proceed to Paraguay for the purpose and it is not certain that you will find both or either disposed to repair thither with you. If, however, the contrary should be the fact you will, of course, endeavor to accommodate them on board your vessel and coöperate with them for the important public object in view. If neither Mr. Schenck nor Mr. Pendleton should accompany you, the duty of concluding the Treaty will devolve upon yourself alone. You may accordingly propose one upon the general basis of the Treaty between the United States and the Republic of Costa Rica, of the 10th. of July 1851, copies of which you will herewith receive. Inasmuch, however, as it would be desirable for the instrument to embrace a stipulation securing to the vessels of the United States with their cargoes the free navigation of the rivers of Paraguay or upon the same terms that may be granted to the vessels of any other foreign nation you will make an overture for that purpose and press it towards a favorable conclusion. In executing this trust, you will be allowed any expenses necessarily incidental to it of which you will keep an account to be supported by vouchers in every instance where they can be obtained. Under existing laws you cannot expect any compensation for the service other than that to which you may be entitled to as an officer of the Navy for the time being. It is not to be doubted, however, that, if you should be successful, you may confidently rely upon the liberality of Congress, whose attention to the subject would it is presumed be invited by the President of the United States.

You will of course observe a discreet silence in regard to the objects of your visit to Paraguay.

The official report of Lieutenant Page on the "exploration and survey of the river La Plata and its tributaries" during the period 1853–56, addressed to the Secretary of the Navy under date of August 4, 1856, is in Senate Executive Document No. 5, 34th Congress, 3d session, serial 876, pages 430–65. A much more complete account is in his work entitled "La Plata, the Argentine Confederation, and Paraguay". His ship was the steamer *Water Witch*, of four hundred tons and nine feet draft. Lieutenant Page, of course, did not act under his instructions and full power to negotiate at Asunción, as he did not arrive at Buenos Aires until May 25, 1853 (*ibid.*, 35).

Treaties of July 10 and 27, 1853, with the Argentine Confederation

In company with the Ministers of the three European powers [1] Pendleton arrived at Buenos Aires from Asunción on March 26, 1853. He found civil war in progress. The city of Buenos Aires

[1] For France, the Chevalier de Saint-Georges; for Great Britain, Captain Sir Charles Hotham, R.N.; and for Sardinia, Marcello Cerruti.

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was besieged by the land and naval forces of General Urquiza. Hostilities, however, were not going on, as an armistice existed (D.S., 8 Despatches, Argentina, No. 26, April 2, 1853). On May 1 Pendleton reported that the city and Province "are in as bad a condition as civil war can create"; but he thought that the city could not hold out much longer against the forces of Urquiza (*ibid.*, No. 28); and he wrote at this time to Schenck at Rio de Janeiro, suggesting that the latter come to Buenos Aires for negotiations "with the Argentine States" (*ibid.*, No. 30, June 1, 1853; D.S., 20 Despatches, Brazil, No. 54, May 12, 1853, enclosure, excerpts from letter of Pendleton to Schenck of April 28–May 2; for the three cited despatches of Pendleton, Nos. 28 and 30 in part only, see Manning, *op. cit.*, I, 541–42, 548–50, 551). Schenck at once left his post (May 13) and arrived at Buenos Aires on May 21, 1853.

Arrangement of the terms of the treaty of July 10, 1853, seems not to have been very difficult. A somewhat elaborate decree of General Urquiza regarding river navigation had issued under date of August 28, 1852 (translation in D.S., 19 Despatches, Brazil, with No. 37, of October 14, 1852); a decree for the free navigation of the River Paraná had been issued by the Government of Buenos Aires on October 18, 1852 (certified copy and translation with despatch No. 20, of October 26, 1852, in D.S., 8 Despatches, Argentina); and there was another decree of Buenos Aires regarding free navigation, of November 24, 1852 (see the discussion of the subject by James A. Peden, Minister Resident, dated at Buenos Aires October 27, 1856, printed in Manning, *op. cit.*, I, 618–20).

The treaty of July 10, 1853 (this date was a Sunday), was signed on July 13 at San José de Flores, the headquarters of General Urquiza, near the city of Buenos Aires (now within the city limits). At the same time identic treaties, *mutatis mutandis*, between the Argentine Confederation and Great Britain and France respectively were signed, the ratifications of which in due course were later exchanged (for the text in French of the treaty with France, see De Clercq, Recueil des traités de la France, VI, 377–79; and for the text in English and Spanish of the treaty with Great Britain, see 42 British and Foreign State Papers, 3–6). The first report of Pendleton of the signing of the treaty of July 10, 1853, is in this despatch of July 14 from Buenos Aires (D.S., 8 Despatches, Argentina, No. 32):

> I have the honor to inform you, that Mr Schenck and myself concluded and signed with the Plenipotentiaries of the Supreme Provisional Director [1] of the Argentine Confederation, yesterday, a treaty for the free navigation of the Rio de la Plata and all its tributaries so far as the same lie within the Argentine jurisdiction.
>
> I shall send you a copy of it by the first British packet, so that you will receive it during the last week of September.
>
> I should have sent it with this; but I am only allowed a few minutes within which to drop you a hasty line announcing the fact.
>
> I think you will find its provisions entirely satisfactory—and especially in the fact that it is made a *perpetual* treaty, without any limitation whatever.

[1] General Urquiza.

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We have been indebted to very peculiar circumstances for being able to accomplish so important a result. The same treaty, in precisely the same terms, and of precisely the same date, was made with England and France. It fixes forever the question of the free navigation; and concludes, in connection with the treaties lately made [1] with the republics of Paraguay and the Banda Oriental, the whole subject, so far as the matter has any interest. For it leaves nothing for future negotiation, unless it be possibly some very small affair with Bolivia or Brazil, in respect to the extreme and very diminished sources of this great river.

I will enter into all the particulars by the Packet, which will bring the copy of the treaty. The original as signed by the Plenipotentiaries will be forwarded by Mr Schenck from Rio.

We expect to conclude in a few days a commercial treaty with the Provisional Director. It is next to a certainty indeed that we shall do so.

A more detailed account from Pendleton is in his despatch of July 24, with an addendum of August 1, 1853 (*ibid.*, No. 34); that despatch is dated "Aboard the Steamer Water Witch River Uruguay July 24th 1853"; this was one day after Schenck and Pendleton had embarked for their voyage to Entre Rios (Page, *op. cit.*, 51); the addendum was written on the return voyage to Buenos Aires; the text of the despatch follows:

The British Mail Packet which leaves Buenos Ayres on the 2nd Proximo for Southampton affords me an opportunity to transmit to you a copy of the treaty, made as I have before informed you, with the Provisional Director of the Argentine Confederation, in respect to the free navigation of the rivers within the Jurisdiction of the States which compose that confederation

The treaty itself will be forwarded by Mr Schenck. The English and French Ministers and Mr Schenck and myself had for some time awaited the termination of hostilities at Buenos Ayres, with the expectation of making immediately thereafter, such a treaty as we have made; when we expected to be able to make such a one as would bind the Province of Buenos Ayres, no less than the other Thirteen Provinces, which still adhere to their Union, and have without division, adopted the Constitution; a copy of which I sometime since forwarded you

We thought in June that the City of Buenos Ayres would be compelled in a very short time to submit, and consequently that the old Confederation of the Fourteen States, or Provinces, would be reestablished

The treason of Admiral John Halsted Coe [2] already related to you in my previous dispatches, placed things in so different a position from that which theretofore existed, that it seemed to have become a matter of the greatest uncertainty not only *when* but *how*, the controversy would end

Desertion, treason, and venality, to an extent not to have been expected in even the most demoralized and corrupt communities, were exhibiting themselves familiarly; and on both sides

Urquiza with a very small force from the Upper Provinces, was beseiging the town, in conjunction with a strong force, under the Provincial Chiefs of Buenos Ayres, headed by Genl Lagos. The blockading squadron was sold, and delivered

Some chiefs of the outside party [3] had been bought, and had come over. Many others were suspected

Millions of money were issued weekly from the Bank of Buenos Ayres, and applied with the most unbounded extravagance, at every assailable point

[1] I.e., those made during the mission of Schenck and Pendleton and discussed above.

[2] Coe, said to have been "formerly" an American citizen, was in command of the naval forces of Urquiza; these went over to the "inside" party, that of Buenos Aires. Pendleton wrote on the facts at some length in his despatches No. 31, of June 27, and No. 33, of July 24, 1853, the latter with relevant enclosures (D.S., 8 Despatches, Argentina). See also Page, *op. cit.*, 43–44.

[3] That of General Urquiza.

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Besides this, the Federal Constitution had been agreed on by the Constituent Congress, and had just been adopted by the Thirteen upper Provinces; and by the Province of Buenos Ayres, except the City

In these circumstances, Mr Schenck and myself concurred with Sir Charles Hotham and Mr St George, in the opinion, that it was a proper occasion, to propose a mediation, between the parties, with a view, first to accomplish if possible, a pacific adjustment, and whether that could be done or not, make a treaty, with the Director, in respect to the navigation of the rivers.

The parties inside and out, consented. After various interviews, and much discussion, the terms were agreed, and reduced to writing. The inside Ministers, as I then believed, and as was eventually manifest to every body, were acting from the beginning, with the most profound duplicity, and with the purpose of fraud, and treachery, in the end

Their object was to produce disorder, and discontent, among the outside chiefs—to keep up with us, and with Genl Urquiza, the show of pacific intention, and negotiation, until the jealousy of some, the corruption of others, the false sense of present security, with all, might produce such a state of things, that by a United and vigorous effort, they might surprise, and capture, the principal chiefs, especially Urquiza, whom they would have shot, undoubtedly, and instantly.

It was a very difficult game—but was cunningly, played, and would have succeeded, but for the merest possible accident

The treaty was an independent affair with Urquiza and his ministers, and is yet confidential; and is not expected to be made public, until its ratification. It binds for ever, the Thirteen Upper Provinces beyond all question, and is I think binding on Buenos Ayres as the case now stands. But if that Province remains permanently separated from the Confederation, it may be necessary to make another with her. It will not be at all difficult; for we have now, treaties all around her, and she will be much more concerned to treat, than we are. Her present position is an anomolous one—she may be said to be in a state of *Nullification;* for she claims to be *in* the confederation, and yet refuses obedience to the unanimous decision of the others.

She wants a Union which she can rule herself, or which is so arranged, that she is herself to determine, *when* she will, or will not, obey, the general laws

The official organs avow this pretension, on the assumption, that Buenos Ayres has most of the wealth, and *all* the intelligence, of the Original Union.

The pretension is utterly unfounded in respect to the matter of intelligence, as I have myself had occasion to learn—and as to the wealth, excepting from the computation that of foreigners, it is equally untrue.

The terms of the pacification were carried back and forwards, altered, and modified, to suit the parties—adopted by vote of the outside chiefs, convoked for the purpose, and agreed to by the inside ministers; and finally we all left the head quarters of Genl Urquiza on the night of the 12th of July with the understanding that we would return the next morning at nine o Clock, with the agreement signed by the inside ministers.

The treaty was to be signed at the same time, as in fact it was. A suspension of hostilities was to be proclaimed—Urquiza with his artillery, and escort of seven hundred men, was to embark on the American, English, and French, men of war in port. The chiefs to disband their troops, the inside party to do the same, and to pay to those of the outside, a sum not exceeding two millions of dollars; and a general amnesty announced. Besides this, the chiefs were to retain their rank.

On the morning of the 13th Sir Charles Hotham called at an early hour on the ministers and understood every thing to be agreed—but the copies of the agreement, were not ready for signature; and it was important we should proceed to the fulfillment of our appointment for nine o Clock

We went out—signed the treaty—and returned post haste, to get the signed articles, and have the necessary proclamation made; so that Urquiza might embark the same evening, or the next day.

The other three gentlemen went directly to the Government house, whilst I went to look after the men of war, and to see, whether their arrangements, had been fully completed.

I found all right, with the vessels, and returned to take up Mr Schenck at the Govt house, for our return to San Jose de Flores

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I found there every thing in excitement, and confusion—an immense rabble about the doors and streets—The ministers, and the mediators, in a most angry discussion; the former denying what they had agreed to, shuffling and prevaricating, in the grossest manner, and the latter, especially Mr Schenck and Sir Charles Hotham, denouncing their conduct, in terms of great severity

I had for myself, never placed any sort of reliance on the truth, or honesty, of the inside chiefs, and was on the look out, for some such explosion as seemed to be at hand.

With the concurrence of the other Gentlemen, I determined to proceed forthwith to Urquiza, and to give him notice of what was going on; that he might govern himself, accordingly

I found every thing in the camp in as much confusion as in town. The inferior officers, and soldiers, had been excited with representations that by the instrumentality of the foreign ministers, they had been sacrificed, &c &c.

That the accommodation was altogether for the benefit of the leaders—every body else sold

This was the work of the inside gentlemen of course, and undoubtedly a part of their plan from the beginning. The leading chiefs urged Urquiza to embark—Determined to march in order themselves the same night, at a later hour, and thus to avoid all chance of the success of the trick, then manifest

They were of opinion that there would be an attack made, most probably on Urquiza's escort, as he proceeded to embark, if he delayed even for an hour, or two, and that I believe, was his opinion

At about seven o Clock, I took him in my carriage, and surrounded by his escort, we marched to the river—passing the enemies lines in sight, if it had been day, and in hearing in fact, I presume.

There was no attack. We got on board the "Water Witch" between nine and ten. The troops were embarked aboard the "President", the "Locust", and the "Sesostris", by sunrise the next morning [1]

Early in the morning the troops of the inside came out in great numbers, and murdered the only soldier they found, left by some chance ashore. I was myself present when this occurred, having gone ashore to see after my carriage

The inside party, ultimately signed the papers; but have failed to comply with any thing they undertook so far

The Steamers proceeded with Urquiza to Entre Rios and returned to Buenos Ayres on the 22d inst.

The enclosed notes [2] will shew the circumstances under which Captain Page consented to take part in the removal of Urquiza, and his troops

It is due to that very gentlemanly and intelligent officer that I should testify, to the propriety of his bearing, in all things, whilst on this station.

I have reason to believe that the services he rendered the Director, have made such impressions, as will tend very much to favor the operations he is sent to make in the exploration of the rivers

We are now on our way to Entre Rios, for the purpose of making a treaty; and I leave this open to announce the result

AUGUST 1st 1853

The treaty of Commerce &c is made, and we are now on our way to Buenos Ayres with the hope that Mr Schenck may be able to reach the Packet which leaves tomorrow. He will forward it from Rio. I have been a good deal indisposed, for several days, and am not yet well—and I refer to him, any statement in relation to the treaty, which he may think necessary

Schenck also reported from Rio de Janeiro on the two treaties; the earlier of his two despatches on the subject is that of August 16, 1853, from which these passages are excerpted (D.S., 20 Despatches, Brazil, No. 71):

[1] Compare the more accurate account in Page, *op. cit.*, 46–51.

[2] Not with the despatch. Two notes to Lieutenant Page, one from Pendleton of July 3 and one from Schenck and Pendleton of July 10, 1853, are printed in Page, *op. cit.*, 42–43, 46–47.

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Hearing that the "Maria", a fast American vessel, is immediately to sail for New York, I hasten to announce to you, by this first opportunity, my return from the River Plate. I arrived here yesterday, in the British Mail Steam packet from Montevideo; but after so uncomfortable and protracted a passage, that it must be some days, I feel, before I shall be in condition to report fully on all I have to communicate.

Mr Pendleton has notified you of the important fact that I am the bearer to this place, of two treaties that we have concluded with the Argentine Confederation,—one on the 10th day of July, at San José de Flores, (Buenos Ayres,) for the free navigation of the Rivers Parana and Uruguay; and the other, on the 27th of the same month, at San José (Entre Rios), establishing generally Friendship, Commerce and Navigation between the two Nations. These treaties were negotiated and made with the plenipotentiaries appointed for the purpose by General Urquiza, the Provisional Director. He has ratified them both.[1] This gives to them, we have full right to claim, all necessary validity to be binding on the whole Confederation; but they are to be submitted, for further approval, to the first Legislative Congress that will assemble under their Constitution.

The duties of my Special Mission to the Countries on the River Plate are thus terminated; and the results of the joint labors of my colleague and myself will prove, I trust, as satisfactory to our Government, as I confess they are gratifying to me.

Mr Pendleton has already, for us both, in different despatches, given a pretty full account of the circumstances attending our negotiations. As our residence was together at Buenos Ayres, it was thought best, as when I was there before, that the Department should be kept regularly informed of our joint proceedings through that Legation. Other explanations and details I will add when I send the treaties. They are of two much consequence to be subjected, if it can be avoided, to the ordinary chances of transmission; and I shall delay the forwarding them for a few days, with a view of placing them in charge of some safe special messenger. I am anxious however that they shall reach you, so as to be submitted to the President, in time to be considered, before the communication of his annual message to Congress.

Having left here on the 13th of May, my absence again has been a little more than three months.

As has been seen, the two Plenipotentiaries of the United States left Buenos Aires on the *Water Witch* for Entre Rios on July 23, 1853. They ascended the Uruguay River to the mouth of the Gualeguaychú River, where the *Water Witch* anchored and the Plenipotentiaries proceeded by boat to the town of Gualeguaychú on the river of that name. There Pendleton, who had become ill, remained, while Schenck and Lieutenant Page went on to their destination, San José, the seat of the *estancia* of General Urquiza, a drive of "about fifty miles", where they arrived on July 26. At San José Schenck and Page stayed until July 29; after spending one night at Concepción del Uruguay, "about eighteen miles from San José", they rejoined Pendleton at Gualeguaychú, whence they proceeded by sailboat to the *Water Witch*. Weighing anchor on July 31, they reached Buenos Aires on August 2 (see Page, *op. cit.*, 51–63; National Archives, Log Book, U.S.S. *Water Witch*).

The treaty of San José is dated July 27, 1853; although the actual date of signature was perhaps a day or two later, the terms must have been very speedily arranged by the Plenipotentiaries (see Page, *op. cit.*, 52, 59). The signature of Pendleton, who was not at San

[1] Regarding these two ratifications, see below, under the heading "Exchange of Ratifications".

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José, was, by the courtesy of General Urquiza, added to the two originals at Gualeguaychú.

The negotiations of both treaties and the surrounding circumstances are very interestingly recounted by Schenck in this despatch from Rio de Janeiro of August 22, 1853 (D.S., 20 Despatches, Brazil, No. 72):

By my last despatch, you were informed that I had returned here, bringing the two treaties which Mr Pendleton and I have had the good fortune to conclude with the Argentine Confederation. I send them now, with other original papers, as follows:

1. The Treaty of *San José de Flores*, for the Free Navigation of the rivers Parana, and Uruguay, made July 10th, 1853; accompanying which is a Notice [1] of the Ratification of the same, on the 12th of July, by General Justo José de Urquiza, the Provisional Director.

2. The Treaty of Friendship, Commerce and Navigation, made at *San José*, July 27th 1853; accompanied by the Certificate of Powers [2] of the Plenipotentiaries of the Confederation, of the same date; and the Notice [1] of Ratification by the Provisional Director, on the 30th of July.

In the case of the Treaty of San José de Flores, there was but one general Power given to the Argentine Plenipotentiaries, authorizing them to treat alike with the United States, Great Britain and France; and as there could not be an exchange with each, the original was left in custody of the French Plenipotentiary.

It will not be necessary that I should add much to what has already been reported to you, of the circumstances attending our negotiations, and the signing of these treaties.

On my arrival at Buenos Ayres, on the 21st of May last, I found the city in a state of close siege, and blockade. The conferences between the two belligerent parties, which were initiated and conducted under the auspices and mediation of the Ministers of Brazil and Bolivia, had been broken off; and I was, accordingly, disappointed in my expectation of finding peace, and, with it, the Government of the Confederation established and prepared to treat. For two months the prospect of making my mission effective seemed to be no better; and at the close of June, I had determined, and was prepared to return to my post here, abandoning for the present all idea of a treaty, general or special, and leaving further negotiations, on the part of our Government, to a more promising time, and to whomsoever might be hereafter appointed to the duty.

But just at that contingency, I obtained such reliable information of a crisis at hand, as induced me to change my purpose; and I resolved to remain another month. I became satisfied that in the new aspect of affairs would be found the first and best opportunity that was likely to present itself for concluding treaty stipulations, which should not only embrace, so far as the United States were concerned, the general provisions for reciprocal commerce and friendship, but that with these, or in advance of these, might be obtained the great object of the Special Missions of England and France, as well as what we sought ourselves; security for the Free Navigation of the rivers. To this latter object particularly, in conjunction with the British and French Ministers, we first applied ourselves; and the result is the treaty of the 10th of July.

So far as the Argentine Confederation is concerned, or has jurisdiction in the rivers La Plata, Parana, and Uruguay, not only the principle, but the fact, is now fixed and perpetual.

A free passage for the commerce of all the world on those waters, will no longer depend on laws or decrees which may be repealed, or even on a Constitutional provision which may be changed, but is safe, henceforth, under the solemn guaranties of international contract.

[1] A translation of this notice is printed below, under the heading "The Exchange of Ratifications".

[2] A translation of this full power is printed above, under the heading "The Full Powers".

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A similar treaty precisely, in all its terms, was signed on the same day, by the Plenipotentiaries of Great Britain and France.

Mr Pendleton has already given you an account of the base and treacherous transfer of the blockading squadron of the Confederation, by Coe, their Chief Naval commander—the disastrous influence that that surrender had upon the besieging army—and other particulars of the course of events which led General Urquiza to determine finally to abandon all further forcible measures towards Buenos Ayres. It is sufficient with reference to our diplomatic duties and services, in the midst of these occurrences, to state that we had to go back and forth through the lines of the belligerent parties, with such degree of safe conduct as their passes and escorts would secure to us; seeking actively and discreetly as we could to provide for the interests we had in charge, and not always, perhaps, without exposure to some little peril. It was in truth a sort of duty somewhat anomalous, and in proportion exciting, for a *civilian* to be engaged in!

The mediation which was undertaken by Sir Charles Hotham, the Chevalier St Georges and myself, at the instance of both parties, has been also explained to you; and its abrupt conclusion, the final breaking up of the siege—the retiring of Urquiza with the troops of the Confederation, and the dispersion of the outside chiefs of the Province of Buenos Ayres.

General Urquiza, as Provisional Director, with approval of the Constituent Congress, took at length the course which should have been, I think, his policy and the policy of the other thirteen Provinces, from the beginning; that was to leave Buenos Ayres to herself, to unite or not with them, as she might elect, under the Constitution.

It was in this view of the subject that we mutually agreed with the Provisional Director, that the time had come for treating with the Confederation, under his auspices. Buenos Ayres may deny in her present anomalous position, refusing as she does to be represented in the Constituent Congress, that treaties thus made are binding upon her. I have no apprehension however that she will to the end continue to disregard their obligations. But if she should attempt to do so, she will be ultimately and soon, in one way or another, compelled to abide by them. She is either in the Confederation, or out of it. If in it, she must be made to conform to its international duties; if out of it, and hereafter recognized as a separate nationality, she will be constrained, by the opening of the rivers and ports above, and for her own self preservation, to enter into similar treaties on her own account. The time has passed by, when a single Province or city, upon her pretensions of her superior wealth, population, and strength, can dominate over all the others, obstructing their progress, and hindering the friendly relations they would establish with other countries. She will learn of necessity, the republican lesson of political equality with her sister provinces, and that she must not expect them to submit to no organization, but one which would leave all the power and rule to her.

I may here add that the Constitution [1] (so identical almost with our own) which was adopted at Santa Fé, and submitted, through the Provisional Director, to the people of the Provinces for their acceptance, has been received enthusiastically every where out of Buenos Ayres; and I presume that the next step of the Constituent Congress which framed it, and which remains in session, until the complete organization under it, will be the appointment of a day for the election of President and Vice President.

Urquiza will undoubtedly be elected President, if he is willing to accept the office. His elevation to that position, will confirm still more the hostility of Buenos Ayres. But she would be almost equally averse to the election of any one, being a native and resident of an interior Province.

But leaving these speculations as to the future of the Confederation, I present, with brief remark, the Treaties as we have actually made them; and which I trust will receive the sanction of the President and the Senate.

The treaty of San José de Flores is a success, you will observe, quite exceeding what Mr Webster, in his instructions [2] to me of the 28th [*29th*] of April 1852,

[1] A copy of the Constitution of 1853 is with Pendleton's despatch No. 30, of June 1, 1853, in D.S., 8 Despatches, Argentina. The document and its history are learnedly treated in Rowe, *op. cit.*, 41–54.

[2] Printed above.

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expected we should be able to accomplish. It was hardly hoped then, that a negotiation for the Free Navigation of the rivers could terminate thus favorably.

This treaty embodies the principle of General Urquiza's decree [1] of the 3d of October 1852; and will be in entire accord with Article 26, First part of the Constitution of the Confederation. The Constitutional declaration is in these terms:

> "Art. 26. La navegacion de los rios interiores de la Confederacion es libre para todas las banderas, con sujecion unicamente á los reglamentos que dicta la Autoridad Nacional." [2]

It was at first objected, on behalf of the Confederation, that this provision of their Constitution removed the whole subject from the Treaty making power, and would leave it only within the jurisdiction of the Congress. The legislative power, it was claimed, could alone be the National Authority to prescribe the needful regulations for such free navigation.[3]

After much discussion we overcame this position, by satisfying the Plenipotentiaries as to what must be the interpretation of their own Constitution, to wit: that treaties regularly concluded, either by the present provisional Executive, or made by the President and approved by Congress, after the organization under the Constitution, are to be taken, as in the United States, as "the Supreme law of the land"; and that "regulations" established by treaty must be considered as much sanctioned by the "National Authority", as if enacted in the shape of statute law. This radical and essential point was yielded to us, upon the argument which was devolved upon me to make, in behalf of the three Powers.

I do not know that more than one or two of the particular articles or clauses of this Treaty require comment. The others all clearly explain themselves.

Article V is an important stipulation. The Island of Martin Garcia [4] being at the head of the River Plate, and commanding the whole channel by which vessels must pass, to and from the mouths of the Parana and Uruguay, an unfriendly power, in possession of that point, might obstruct the whole navigation. Hence the necessity of some guard against such possible interruption. The Province of Buenos Ayres at present claims and holds the island.

Mr Pendleton and I would not agree, on behalf of our Government, to any stronger obligation of resistance, than is conveyed by the phrase "use their influence". That is an expression which will admit of great latitude of interpretation. Some such clause, however, in the treaty, you will at once perceive was essentially necessary for its certain efficiency.

So far as the Confederation is concerned, it is to be fairly claimed, I think, that the ratification of this treaty, as well as of that subsequently made at San José, is complete.

But General Urquiza, at the same time that he, in the exercise of his plenary powers as Provisional Director, was willing to give, and has given his absolute confirmation to them both, has yet, out of respectful deference to the Congress, whose sanction will be required to treaties made under the Constitution which is so soon to come into force, declared also his purpose to submit these to the approval of that body. This explanation may remove some ambiguity you might otherwise find in the respective ratifying clauses.[5]

Our cooperation with the British and French Plenipotentiaries ceased after the execution of the River Treaty.

Mr Pendleton and I proceeded, as he has informed you, on the 22d [*23d*] of July to Entre Rios, to pursue our further negotiation on account of the United States alone. The treaty we agreed on there, on the 27th, is substantially the same as

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[1] The reference is doubtless to the decree of August 28, 1852, cited above.

[2] Translation: The navigation of the internal rivers of the Confederation is free for all flags, subject only to the regulations which the National Authority may issue.

[3] Precisely the same fallacious argument has frequently been made regarding various provisions of the Constitution of the United States.

[4] Comments on the island and the navigable channels are in Page, *op. cit.*, 44–46.

[5] Article 9 of the treaty of July 10 and Article 14 of the treaty of July 27, 1853.

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that [1] which Great Britain at present enjoys; hers being made in the time of Rosas at Buenos Ayres; and France has entrusted the duty of endeavoring to obtain a similar one to a new Minister Plenipotentiary, who had just arrived in the River at the time of my leaving.[2]

You will find that in all the articles, there is no material alteration, in any respect, from the ordinary form and provisions of these reciprocal treaties which we were instructed to adopt. In some parts, only, I sought to simplify, condense and make a little clearer; and trust I, in some small degree, succeeded.

In one important particular, however, we have obtained an advantage quite beyond anything secured in other treaties of this class. This with the Argentine Confederation is perpetual.

Considering the principles of reciprocity established by it, and the comparative amount of commercial and other interests of the two countries and their citizens, to be benefitted in their relations with each other, our Government has all the gain, and loses nothing by the absence of any limitation of time. It is not probable that such a perpetual treaty would have been obtained by us now, but for the fact that the existing treaty with England is without limit.

But we have not found General Urquiza, nor any of those associated with him in the present government of the Confederation, disposed to prefer any other country, or its interests, to those of the United States. Indeed, there is entertained for us, I may say, a decided partiality. They look, at present, with especial interest, for the public opinion of our people upon the experiments they are about to make with our federal Constitution. In the journey made by Mr Pendleton and myself to Entre Rios, to meet General Urquiza, and conclude the general treaty, we were received and entertained with marks of most distinguished and flattering respect to our country. We were made, at all points, the guests of the government—the American flag was displayed at every opportunity—and, in short, every testimonial and attention exhibited, which could indicate the high consideration in which we were held as representatives of an admired nation.

Mr Pendleton being unfortunately taken sick by the way, and unable to proceed farther than Gualeguaychu, I had to go on to San José and agree upon the treaty alone; but General Urquiza kindly and promptly met this difficulty by sending a confidential messenger back with me, a distance of seventy miles, to bring and take the copy for the Confederation, so that my colleague should also have opportunity to affix to it his seal and signature.

This partiality towards the United States is the more to be regarded, when it is considered that the recent treachery of our countryman Coe, and the very reprehensible conduct, in that connection, of one of our Naval Officers of high rank, and perhaps of other American citizens, had tended, just at that time, to excite a prejudice to our general disadvantage and discredit.

I have thought it not impertinent to the subject of my despatch, to mention this continued favor towards our Government and people, as it may avail something, hereafter, to cultivate and encourage such a disposition for the benefit of American commercial and other interests that may be expected to spring up and increase in that quarter.

I must not close this despatch, without bearing testimony to the very friendly cooperation that Mr Pendleton and I have had, throughout the negotiations, with Sir Charles Hotham, and the Chevalier St Georges, the British and French Ministers, in all that related to the objects and interests of our three governments that were in common. We found both those gentlemen, on all occasions, liberal and frank in the highest degree. I believe it will be admitted all around that we labored together, when it was necessary or expedient, with joint and mutual benefit.

I desire also to express to you a very high sense of the important services rendered to us by Lieutenant Thomas J. Page, Commanding the U.S. Steamer "Water Witch". Without his various services and assistance, in carrying General Urquiza and his Staff, when they retired from Buenos Ayres; in conveying Mr Pendleton and myself, afterwards, to Entre Rios, and in other duties which

[1] Of February 2, 1825; text in 12 British and Foreign State Papers, 29–37.

[2] No record has been found of any similar treaty of this time between the Argentine Confederation and France.

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he, with his ship, was able to perform, I hardly know how we could have succeeded in bringing our negotiations to so successful a conclusion. The presence of the "Water Witch", for several weeks, at that particular juncture, was invaluable; and all her movements strikingly exemplified the necessity of having a vessel of her kind and class, on almost all occasions, in the River Plate.

Will you please communicate to the Secretary of the Navy, this expression of our appreciation of the services of Lieutenant Page.

Two earlier treaties were the bases of the treaty of July 27,1853. One of these is the treaty[1] with Costa Rica of July 10, 1851 (Document 147), referred to in the instructions to Schenck and Pendleton; the other is the treaty between Great Britain and the United Provinces of the Rio de la Plata of February 2, 1825 (12 British and Foreign State Papers, 29–37).

Articles 1, 3, 4, 5, 8, 10, and 11 of the 1853 treaty are, with some stylistic compression, very similar respectively to Articles 1, 3, 4, 5, 7, 9, and 10 of the Costa Rican treaty, except for a new paragraph regarding consular archives in Article 11 of the former; in Article 2 of the 1853 treaty there are two or three phrases which are not in the same article of the Costa Rican treaty and there is no express reference to the coasting trade, but otherwise the two articles are almost identical. However, with these likenesses there are notable differences between the two texts.

As mentioned in Schenck's quoted despatch of August 22, 1853, the omission from the 1853 treaty of any clause of termination or denunciation was deliberate; and so must have been the altered wording of Article 9 (cf. Article 8 of the Costa Rican treaty), not only in the final phrase but particularly in the opening sentence, which, like the corresponding clauses of Article 9 of the British treaty, is as sweeping in respect of realty as of personalty; clearly Schenck had no doubts about the treaty power in this regard.

Article 6 is much broader in effect than the articles of the same number in the Costa Rican and British treaties. Article 7 is not in the Costa Rican treaty in any form (cf. Article 7 of the British treaty). Article 12 is from Article 11 of the British treaty and is broader than the same article in the treaty with Costa Rica. The first paragraph of Article 13 is from Article 12 of the Costa Rican treaty, the remainder from Article 12 of the British treaty; and finally the ratification clauses of Article 14 are, like the corresponding clauses of the treaty of July 10, 1853, quite unusual, for reasons explained in the despatch of Schenck last mentioned.

The Exchange of Ratifications

The two treaties with the Argentine Confederation were approved by the Pierce administration. Secretary of State Marcy wrote his congratulations upon receipt of a copy of the one of July 10, 1853 (D.S., 15 Instructions, Argentina, 62–63, October 8, 1853). The treaties were submitted to the Senate with messages of President

[1] The fact that this treaty with Costa Rica was almost wholly copied from the treaty between Costa Rica and Great Britain of November 27, 1849, is of some interest here (see vol. 5, pp. 1000–1001, 1004).

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Pierce of December 12, 1853, without accompanying papers; and advice and consent of the Senate were given unanimously on June 13, 1854 (see Executive Journal, IX, 180, 181, 216, 332–33). Ratification by President Pierce followed on July 5, 1854, for the treaty of July 10 and on June 29, 1854, for the treaty of July 27, 1853. This was well within the fifteen months allowed for ratification on the part of the Government of the United States by Articles 9 and 14 respectively.

By the clauses of those two articles the term allowed for the exchange of ratifications was eighteen months. They also provided that the treaties should be ratified by the Provisional Director of the Argentine Confederation within two days (treaty of July 10) or three days (treaty of July 27) and that he should present the treaties "to the first Legislative Congress of the Confederation for their approbation" (or "approval"; in the Spanish *aprobación* in both treaties). Formal ratification on the part of the Argentine Confederation, subsequent to such approval, was thus contemplated in addition to the preliminary and immediate ratification by the Provisional Director. Notice of the first ratifications was duly given by General Urquiza under dates of July 12 and July 30 respectively; the originals of those notifications are with Schenck's despatch No. 72, of August 22, 1853 (printed above); they read as follows in translation:

SAN JOSÉ DE FLORES, *July 12, 1853.*

The undersigned, Provisional Director of the Argentine Confederation, has the honor to address the Minister of the Republic of the United States, informing him that the Treaty of Navigation concluded and signed on the tenth day of the current month with the Plenipotentiaries of the Confederation is ratified by the undersigned on this date in due form.

JUSTO J. DE URQUIZA

To His Excellency the Envoy Extraordinary and Minister Plenipotentiary of the Republic of the United States, the Honorable ROBERT C. SCHENCK.

HEADQUARTERS, SAN JOSÉ, *July 30, 1853.*

The undersigned, Provisional Director of the Argentine Confederation, has the honor to address the Minister of the Republic of the United States, informing him that the Treaty of Friendship, Commerce, and Navigation concluded and signed on the twenty-seventh day of the current month with the Plenipotentiaries of the Confederation is ratified by the undersigned on this date in due form.

JUSTO J. DE URQUIZA

To His Excellency the Envoy Extraordinary and Minister Plenipotentiary of the Republic of the United States, the Honorable ROBERT C. SCHENCK.

The written authorities issued in 1854 to James A. Peden, of Florida, are now to be discussed. On May 22, 1854, Peden was appointed "Chargé d'Affaires of the United States of America to the Republic of Buenos Ayres" (D.S., 4 Credences, 49). On the following June 29 Peden was appointed "Minister Resident of the United States of America near the Government of The Republic of Buenos Ayres" (*ibid.*, 56). No other commission was then issued to Peden and none could have been, for the Senate was in session and

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it was only for those two offices that he had been nominated and confirmed (Executive Journal, IX, 326, 338, 339, 345). Peden, however, received two credentials dated July 1, 1854, addressed by President Pierce respectively to the Governor of the state of Buenos Aires and to the President of the Argentine Confederation; in each of these he is accredited as Minister Resident of the United States (D.S., 4 Credences, 62). To Peden were also issued five full powers, all dated July 5, 1854. One of these was to treat "concerning general commerce [1] between the United States and Buenos Ayres"; another was to treat "concerning claims of citizens of the United States upon the Government of Buenos Ayres" (*ibid.*, 64–65). Three of the full powers were respectively to exchange ratifications of the treaty with Uruguay of August 28, 1852, of the treaty with the Argentine Confederation of July 10, 1853, and of the treaty with the Argentine Confederation of July 27, 1853 (*ibid.*, 59–61). In the first of these he is spoken of as "accredited as Minister Resident of the United States to the Republics of Buenos Ayres and the Argentine Confederation"; in the other two as "Minister Resident of the United States to the Argentine Confederation".

On June 25, 1856, Peden was appointed "Minister Resident of the United States of America, to the Argentine Confederation" (*ibid.*, 135), following nomination and confirmation for that office [2] (Executive Journal, X, 109–11) and while his nomination as Envoy Extraordinary and Minister Plenipotentiary of the United States to the Government of the Argentine Confederation was pending; that nomination was later withdrawn (*ibid.*, 57, 148).

The instruction to Peden of June 29, 1854, included directions regarding the exchange of ratifications of the two treaties with the Argentine Confederation. Therefrom these paragraphs are excerpted (D.S., 15 Instructions, Argentina, 68–72; in part in Manning, *op. cit.*, I, 44–46):

In addition to the letter accrediting you to the Government of Buenos Ayres, you are furnished herewith, with a letter of credence to that of the Argentine Con-

[1] Acting under this full power, Peden signed at Buenos Aires on September 29, 1856, with the Plenipotentiary of the "State of Buenos Ayres", Doctor Dalmacio Velez-Sarzfield, Minister of Government and Foreign Relations, a Treaty of Friendship, Commerce, and Navigation, of seventeen articles; but that treaty was not submitted to the Senate and did not go into force. The original, written in English and Spanish, is in D.S., 11 Despatches, Argentina, enclosure to No. 55, of October 4, 1856.

[2] In the instruction of July 18, 1856, transmitting this commission, Peden was directed to take leave of the Government of Buenos Aires and to take up his residence near the Government of the Argentine Confederation and was thus informed (D.S., 15 Instructions, Argentina, 94–98; Manning, *op. cit.*, I, 48–50):

> The act of Congress passed on the 1st of March '55 provides for a legation at that republic, but not for one at the State of Buenos Ayres. Whether the President will accredit you also to the latter State will probably depend upon the political relations which may hereafter exist between Buenos Ayres and the Argentine Confederation, of which Buenos Ayres was formerly a constituent part.

For the act mentioned, see 10 Statutes at Large, 619, authorizing an Envoy Extraordinary and Minister Plenipotentiary to the Argentine Republic.

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federation. In determining the priority of the presentation of these respective letters, you will be governed by the relative position of the two powers at the time of your arrival in that quarter, for this Department is not so fully advised in respect to the present political condition of the Argentine Confederation and the Province of Buenos Ayres, as to prescribe the course which under all circumstances will be the most judicious.

Shortly after the overthrow of Rosas, in February, 1852, a general convention of all the Governors of the Provinces composing the Argentine Confederation was held at San Nicolas, in Buenos Ayres, at which a provisional government was adopted, and measures were concerted for a future Congress to be charged with the duty of framing a permanent federal Constitution. At this Convention Buenos Ayres was represented by Don Vicente Lopez, the Governor of that Province. The *Sala* (or Legislature) of this State refused however to ratify the compact adopted by the representatives of the fourteen States, and General Urquiza, who had been invested with extraordinary powers by the provisional code, dissolved the Sala, and appointed a new temporary local government, at the head of which he placed Don Vicente Lopez. Subsequently, however, upon the departure of General Urquiza this government was deposed by the Buenos Ayreans, who resumed the control of the city.

The Congress at Santa Fé, held in accordance with the compact of San Nicholas, adopted a Constitution for the Argentine Confederation, almost identical with that of the United States. This Constitution expressly stipulated for the accession of Buenos Ayres to its terms, should that Province elect to give in her adhesion to the common cause. This step, it is believed, has never been taken; on the contrary, it appears that she still maintains her independent attitude, and that General Urquiza has been recently installed as the President of the *thirteen* remaining Provinces of the Confederation.

It has been deemed proper thus briefly to sketch the recent history of these States, in order that your sphere of duties may be more distinctly understood.

You are aware that this government recognizes others with which it may think proper to enter into diplomatic relations when it is believed that they are capable of fulfilling the obligations and discharging the duties of independent States. The Government of Buenos Ayres, as this Department understands, had its origin in a popular demonstration against the exercise of what were believed to be the extraordinary powers conferred by the Convention of San Nicholas upon General Urquiza. It has thus far maintained itself in its independent attitude; the City of Buenos Ayres probably possesses *nine tenths* of the wealth of all the Provinces; and our commercial relations with that State are of corresponding importance. Under these circumstances it may be advisable to enter into treaty stipulations with Buenos Ayres. For that purpose, a full Power is herewith enclosed, of which you will avail yourself, if after careful observation you are convinced that Buenos Ayres will maintain its independence, and if you find a disposition on the part of her government to negotiate.

At as early a period as may be convenient, you will repair to Paraná, the Capital of the Confederation, where you will present your letter of credence to that government, and at the same time announce your readiness to exchange the ratifications, severally, of the two treaties negotiated with that Government, by the Representatives of the United States in July last. Two Full Powers, authorizing you to make the exchange are herewith transmitted. The preamble to the ratifications of the President of the Argentine Confederation may be similar to the preamble of our ratifications. This must be followed by a transcript of the original Treaty, word for word, and this by the ratification itself. A certificate of the exchange must be executed in duplicate by the person who acts on behalf of that government and yourself. The copy in Spanish may accompany the ratification of the Argentine Confederation, and the one in English be placed with our ratification. A draft of such a certificate accompanies this communication.

Immediately after receiving the ratified copies from the Argentine government, you will inform this Department of the *fact* of the exchange, in order that the Treaty may be published. You will avail yourself of the services of any suitable and trustworthy person, who may be coming to the United States, to bring the exchanges home, and you may inform him that his compensation therefor will

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be at the rate of $6 per diem, and his actual and necessary travelling expenses from Paraná or Buenos Ayres to this city.

In the negotiation of these two important treaties conceding as they do many commercial advantages to the citizens of the United States, General Urquiza has manifested a spirit of liberality and friendship from which the most favorable results may be anticipated. This disposition will render your official residence advantageous to the interests of both countries.

So soon after exchanging the ratifications of the Argentine treaties as may be convenient, you will repair to Monte Video and exchange the ratification of the Treaty with Uruguay with which you are charged. Full Powers and a corresponding certificate for that purpose are herewith furnished, and you will proceed as has been directed with regard to the other Treaties. It is desirable that you forward the exchanged copy by the same messenger to whom you entrust the other Treaties.

Peden left New York on August 5, 1854, for Buenos Aires by way of Liverpool, and arrived at his destination on the following October 20. He decided to defer presentation of his credentials at Buenos Aires (see his despatches Nos. 1, 2, and 3 in D.S., 9 Despatches, Argentina, respectively of August 4, 1854, from New York, of October 23 and 27, 1854, from Buenos Aires, and of November 9 and 13, 1854, also from Buenos Aires; that of October 27 is in Manning, *op. cit.*, I, 565–66); accordingly he left on November 22 for Paraná, the seat of government of the Argentine Confederation, where he arrived on November 27; his official presentation to President Urquiza took place there on December 1.

Peden's despatch of December 4, 1854, from Paraná (with an addendum of December 12), tells of his arrival and reception; excerpts therefrom, with footnotes to some confusing and erroneous statements therein regarding the enclosures thereto, follow (D.S., 9 Despatches, Argentina; the despatch is written in a rather difficult hand; it is printed in part in Manning, *op. cit.*, I, 567–68):

Since closing my dispatch, No. 3, under date, Buenos Ayres, November 9th 1854, I embarked on board the Steamer "Uruguay" on the 22nd ultimo—and after a passage of five days, (360 miles) including twenty four hours detention in the river La plata, before starting, arrived November 27th at Parana, together with Doctor Henry. W. Kennedy, who I have employed to act as secretary and also, my servant, a black man.

. . . . . .

I learned that it is usual here, for the Secretary of a foreign Minister, to call on the chief clerk of the Minister for foreign relations, to learn when it will be convenient, for the Minister to give the Secretary an interview, for the purpose of presenting his Ministers letter, to the Minister of foreign relations (which letter the foreign Minister writes to the Minister of foreign relations,) informing him of his arrival, and the purposes of his Mission, and encloses a copy of his credentials &c

It is also convenient for the Secretary at the same time, to know any formalities, in connexion with the required etiquette. Accordingly, Doctor Henry W Kennedy,—my acting sec'y, called on the chief clerk, of the Minister for foreign relations, on the 28th November, in the forenoon, and learned that the Minister, would rec've my communication, at 4½ oclock same day. The Secretary called and delivered Nos 1. &. 2. to the Minister in person. No 1 containing copy of credential letter of the President of the United States, and the copy of private letter of the President, to the President of the Argentine Confederation No 2, announcing readiness, to exchange ratifications of the two treaties of "friend-

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ship & commerce" and the "free Navigation of the Parana" I enclose copies of No^{s} 1. & 2. marked A B [1]

November 29th, I received note from Minister Foreign relations, naming 1st December Proximo, as the time for presentation of credentials to the President of the Argentine Confederation, of which Copies had been sent as above.

The Chief Clerk called and asked the Secretary—whether I should make any address to the President, on delivering credentials, and that if I intended to do so, it was usual to give the Chief Clerk a "*copy*" the day before, in order that a "corresponding address" on the Part of the President, in reply, should be prepared. Accordingly I presented a "*copy*" herewith enclosed marked C also the Presidents reply mark'd D which was received by me on same day.[2] At the same time that I was informed when the audience would take place, I learned that the Chief Clerk, would call to conduct me to the Government house, (the Chief clerk stands in the relation to this Gov't, as assistant Sec'y of State.) At 12 oclock on the day appointed he called with two carriages, accompanied by Two "aids" of the President in uniform. He rode in one with me, and the two others and Doctor Kennedy in the other. On our arrival, a band of music was playing in front of the house. When we entered the President was seated at the End of the room opposite the entrance, his aids at the same end. The members of the Cabinet, on one side, and the Deputies and officers on the other. The President in full uniform, the aids also, and one officer besides, and no one else. I was introduced to the President and made my address standing. The President and all the rest also. After my address, his reply, was read by the Minister for foreign relations. The President then offered me a seat, on his right hand on the sofa he sitting on a chair beside me. I conversed for about 30 minutes [3] and retired, being conducted back to my lodgings by the same means as I came. The reception was marked, and *cordial in the extreeme.* In the afternoon of the same day I received an official Decree, recognising me as *Minister Resident*, and acknowledged receipt of the same. I herewith enclose copy marked E retaining original.

It is usual here after reception to call on the President—Vice President & heads of Departments, at as early a time as convenient say at most two days.

December 2nd Received official invitation to attend the closing of the Argentine Congress. The address of the President was read in the Church, all the members present, and the citizens generally. After the closing address, the President, Vice President & Members returned to the Gov't House. And in a few moments all took a formal leave, of the heads of the Gov't foreign Minister, & heads of departments. A copy of the official "address" of the "National Argentina", containing my address and the reply of the President are herewith enclosed marked. F.[4]

The custom in this country is to keep the flag of a foreign Minister, flying on Sundays and "fiestas" all others adopt this custom and its omission would be an offence. I have of course followed the precedent. The Department furnished me with a silk flag only. I have purchased a common one, & obtained another of Commodore Salter of the ship "Savannah",[5] (through his Kindness) for these respective legations—Buenos Ayres, and the argentine States.

. . . . . .

[1] The first enclosure is marked "N° 1 A.B." It is a copy of a note dated November 28, 1854, to the Minister of Foreign Affairs, announcing the arrival of Peden and requesting the fixing of a time for the presentation of his credentials; no enclosures are mentioned.

The second enclosure is marked "N° 2. B". It is a copy of another note of Peden of the same date and is properly described in the despatch.

[2] The third and fourth enclosures are marked respectively "CD" and "D". They are undated copies, without indication of signature. "CD" is by Peden, presenting his "credential letter as Minister Resident of the United States of America"; "D", in Spanish, is the acknowledgment.

[3] Badly written, but surely the word intended.

[4] This enclosure, not marked, and bound between "D" and "E", is a copy of El nacional argentino of December 3, 1854.

[5] These names are badly written; but naval records show that the reference is to Commodore William D. Salter, U.S.N., and the frigate *Savannah* (see Page, *op. cit.*, 302, 314).

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I have not yet received official notice of the time when the ratifications of the treaties with which I am charged, will be exchanged, and shall advise the department, in this or succeeding dispatch, when that event occurs. I prepare this in the event of an opportunity offering for Buenos Ayres or Montevideo, before the arrival of the regular steamer.

. . . . . .

I have learned that the President of Paraguay, has sent to this government, a circular "Decree" in relation to the closing of the River Paraguay, to *vessels of war*, in which the *Treaties* between the *United States*, Great Britain, France, and Sardinia, are referred to. This would seem to imply a "ratification" of our Treaty.[1] I enclose copy marked G.[2]

. . . . . .

So soon as I shall complete the exchanges of ratifications of the two Treaties, I shall proceed to Buenos Ayres, & Monte Video to execute the several commissions with which I am charged

. . . . . .

December 12th I have not yet received the notification of the time when the exchange of the ratifications of the Treaties will be made. I think it probable, however, from what I have learned, that the government is waiting the arrival of the Steamer for the *Materials* (Cases accroments[3] for seals &c.) from Montevideo

It is already *ratified* by the *Argentine Congress*. And to effect this, the usual rules were waived and it received the assent of that body, almost at the last hour of the session.

I cannot with propriety, or respect, urge the matter upon their consideration—satisfied as I am, that the delay originates in no desire to procrastinate the event—but only, from accidental circumstances I enclose the original Decree of the Congress, and the proceedings thereon Marked H

The final enclosure to the foregoing despatch, that marked H, comprises the original note of the Minister of Foreign Affairs, Juan María Gutierrez, dated December 7, 1854, and the two enclosures thereto. These are a certified copy of the law passed by the Argentine Congress December 1, 1854, approving the treaties of July 10, 1853, between the Argentine Confederation and the United States, France, and Great Britain respectively, and a certified copy of the law passed December 2, 1854, approving the treaty of July 27, 1853.[4]

The exchange took place on December 20, 1854, and was reported by Peden in his despatch of December 23 (D.S., 9 Despatches, Argentina, No. 5). The proceedings were elaborate and public; there was an address by Peden, responded to by President Urquiza; and the ceremony terminated with a salute of twenty-one guns by the artillery in the plaza of Paraná (see El nacional argentino of December 21, 1854, the first enclosure to Peden's despatch).

The necessary comparison of texts had been made in advance of the formal exchange. A memorandum descriptive of the collating is

[1] The unperfected treaty between the United States and Paraguay of March 4, 1853, previously discussed, had been ratified by the President of Paraguay on March 12, 1853.

[2] The decree is dated October 3, 1854.

[3] The writing of this word is uncertain; perhaps "accoutrements" was intended.

[4] The two mentioned laws are printed in Coleccion completa de leyes nacionales, I, 130, 132–33. The three similar treaties of July 10, 1853, had previously been approved by a law of September 14, 1853, enacted by the General Constituent Congress of Santa Fé (*ibid.*, 81–82); and the ratifications of the British and French treaties had been respectively exchanged at Paraná on March 11 and September 21, 1854.

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printed below, following excerpts from the despatch of Peden to which it is an enclosure:

I have the honor to inform you, that the *ratifications* of the *two treaties of friendship Commerce and navigation* and the *free navigation* of the rivers *Parana & Uruguay*, concluded in the month of July, 1853, between the United States, and the Argentine Confederation, were *exchanged* on Wednesday, the 20th day of the present month—at the city of Parana, between myself on the part of the United States, and Doctor Don Juan, Maria Gutierrez Minister for Foreign relations Argentine Confederation, in presence of the President—Vice President, and officers of the Cabinet, for an account of which ceremony allow me to refer to the National Argentina, Marked No. 1. under date 21st December, 1854.

I enclose also, Memorandum [1] Nos 2 & 3, under, respective dates December 18th & 19th relating to the comparison of ratifications, powers—certificates &c.

I discovered several errors in the Copies of the United States (those of which, I was the bearer) These are pointed out in the above *Memorandum.* They were corrected by conforming them to the *original* Treaty, which was examined, and compared, at the same time with the several ratifications. I assumed this responsibility with the asent of those acting on the part of the Argentine Confederation. I trust in so doing, I meet the approbation of the Department. In this, as in all other things, I find a great degree of friendship manifested on the part of this government, and its officers. I have enclosed the "certificate" of ratification [2]—in the same package with the "Treaties" [3] which shall be forwarded by the first safe opportunity. . . .

I also enclose copies Nos 4. and 5. in relation to the ratifications between the United States and Argentine Confederation [4]

. . . . . .

I also enclose copy No 7. being copy of the *certificate* of *Ratification* of the Argentine Confederation [5]

[Enclosure]

Memorandum in relation to ratifications of Treaties.

December 18th 1854.

In pursuance of note dated December 16th addressed by me to the Minister of foreign relations—alluding to the conversation of the 15th—and in accordance with the Ministers note of same date, in reply—appointing Monday, the 18th December for examination of the respective powers, confirmation of the respective ratifications to wit, that of the President of the United States—and that of the President of the Argentine Confederation—I called at the office of the Minister Foreign relations at 1. of clock Monday—Monday the 18th with the ratifications with which I am charged—Present myself, the Minister for foreign relations—Juan Maria Gutierez—Doctor Monguillot [6]—assistant, sec'y. Doctor Henry W. Kennedy acting sec'y, both of my Treaties were presented, that relating to the free navigation of the rivers Parana, & Uruguay, was examined only. The other being delayed until their ratification was fully prepared. The Minister of foreign relations read the original Treaty, Doctor Kennedy, read the ratification of the President of the Argentine Confederation, Doctor Monguillot that of the United States. In that of the United States the following errors were discovered on the "fifth page" The word "*Paraguay*" it should be "*Uruguay*" [7] to corre-

[1] This paper, which has two numbers, is printed following the despatch.

[2] Meaning the acts or procès-verbaux of exchange.

[3] Meaning the final instruments of ratification by the Argentine Confederation.

[4] These two enclosures and No. 6, which is not mentioned in the despatch, are copies of notes making appointments for meetings.

[5] The two papers of this enclosure are copies in Spanish of the respective acts or procès-verbaux of the exchange of ratifications of the two treaties.

[6] The incorrect spelling of this name here and elsewhere in the memorandum is not reproduced. Dr. Juan F. Monguillot was Chief Clerk of the Ministry of Foreign Affairs.

[7] In the opening paragraph of the preamble.

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spond with the original, and was so altered to correspond with the original, and was so done, in presence of *all the parties*—on same page the word *"esse"* was altered to *"estie"*[1] on seventh page last line: the word *"ditos"* was altered to *"dichos"*[2] on ninth page *"recandation"* was altered to *"recondation"*[3] The original and both copies were examined english & spanish—my power & the form of certificates also. Mr Gutierez remarked that as the ratifications were to be exchanged in public no power was necessary on his part, to which I assented. He did not require any from me.

TUESDAY. 19th DECEMBER 1854.

The Treaty of Amity—friendship—& commerce was this day Examined at my office—myself—Doctor Kennedy—Doctor Monguillot assistant—Major Coudaco—Chief Clk War Department—who is also the English translator—and attended this part of the duties in relation to these Treaties. Major Coudaco, read the "original Treaty" Doctor Kennedy their copy, and Doctor Monguillot the copy of the United States—several errors of punctuation were also discovered in this copy, they were made to correspond with the original, as in the former instance—the English in both those of the United States was correct—theirs were correct in both.

JAMES. A. PEDEN

The four errors (three of spelling only) which are shown by the foregoing memorandum to have been discovered in the text included in the United States instrument of ratification of the treaty of July 10, 1853, were all in the Spanish version; they resulted from a faithful copying of the wording of the signed original in the archives of the Department of State; in the text following the headnote the four words in question have been printed so as to accord with the proceedings had upon the exchange, when the United States ratification was correspondingly altered.

Peden also remarks in his memorandum that several errors of punctuation were discovered in the Spanish version of the text included in the United States instrument of ratification of the treaty of July 27, 1853; these are rather elusive, as they are not listed; a collating of the signed original of that treaty in the archives of the Department of State with the Argentine instrument of ratification thereof discloses twenty-two variances of punctuation, mostly commas, and none of any significance. To some of these Peden doubtless referred, although to which is uncertain; there are differences in the punctuation of the English in the two papers.[4] Accordingly, and pursuant to the general rule of this edition, the text of the treaty of July 27, 1853, is printed as written in the signed original.

The two Argentine instruments of ratification of December 20, 1854, are in the respective files of the two treaties. As they differ somewhat in their references to legislative approval, each of them is here printed in translation:

I, Justo José de Urquiza, President of the Argentine Confederation, make known: that, a treaty between the Argentine Confederation and the Govern-

[1] The word was "ese" in the second paragraph of the preamble; it was altered to "este".

[2] In Article 2.

[3] The change was from "recandacion" to "recaudacion" in Article 4.

[4] It cannot be assumed that in such minutiae the United States instrument of ratification was perfect; and there is evidence that the collating at Paraná was not flawless.

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ment of the Republic of the United States of North America having been concluded and signed at San José de Flores on the tenth day of July of the year of our Lord one thousand eight hundred and fifty-three by the respective Plenipotentiaries, fully authorized to that end, the literal tenor of which is as follows:

[Here follows the treaty text in Spanish and English]

And the Constituent Congress, by its sovereign law [1] of the twelfth of September one thousand eight hundred and fifty-three, having approved the above-inserted treaty, which was ratified by me as Provisional Director on the twelfth day of July of the same year in fulfilment of Article 9, in order to give greater formality to the said ratification I accept, approve, and confirm the same in my character as President of the Argentine Confederation, for the present and for the future, offering and promising to fulfil all the articles and clauses which the above-inserted treaty contains, which I shall not permit to be violated in any way, using to that end all the power and means at my disposal.

In proof and testimony whereof I sign the present instrument of ratification, causing the same to be countersigned by the Minister of the Department of Foreign Relations and sealing the same with the national seal in the city of Paraná, provisional capital of the Argentine Confederation, on the twentieth day of the month of December of the year of the Lord one thousand eight hundred and fifty-four.

JUSTO J. DE URQUIZA

JUAN MARÍA GUTIERREZ.

[Seal appendant]

I, Justo José de Urquiza, President of the Argentine Confederation, make known: that, a treaty between the Argentine Confederation and the Government of the Republic of the United States of North America having been concluded and signed at San José on the twenty-seventh day of July of the year of our Lord one thousand eight hundred and fifty-three by the respective Plenipotentiaries, fully authorized to that end, the literal tenor of which is as follows:

[Here follows the treaty text in Spanish and English]

And the Legislative Congress, by its sovereign law [2] of the second of the current month, having approved the above-inserted treaty, which was ratified by me as Provisional Director within the term fixed by Article 14, in order to give greater formality to the said ratification I accept, approve, and confirm the same in my character as President of the Argentine Confederation, for the present and for the future, offering and promising to fulfil all the articles and clauses which the above-inserted treaty contains, which I shall not permit to be violated in any way, using to that end all the power and means at my disposal.

In proof and testimony whereof I sign the present instrument of ratification, causing the same to be countersigned by the Minister of the Department of Foreign Relations and sealing the same with the national seal in the city of Paraná, provisional capital of the Argentine Confederation, on the twentieth day of the month of December of the year of the Lord one thousand eight hundred and fifty-four.

JUSTO J. DE URQUIZA

JUAN MARÍA GUTIERREZ.

[Seal appendant]

There are two acts of exchange, one for the treaty of July 10 and the other for the treaty of July 27, 1853. In form they are similar,

[1] In the print cited above the date of the law is September 14, 1853. No reference is made in the ratification to the law passed by the Argentine Congress December 1, 1854, also cited previously.

[2] Cited above.

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differing only in the words referring to the treaty in question. The one for the treaty of July 10, 1853, reads thus in translation:

Act of Exchange of Ratifications between the Argentine Confederation and the United States

On Wednesday, the twentieth of the month of December of the year one thousand eight hundred and fifty-four, His Excellency General Urquiza, President of the Argentine Confederation, in the presence of his Ministers, received in formal audience the Minister Resident of the United States for the purpose of proceeding to the exchange of ratifications of the treaty concluded the tenth of July one thousand eight hundred and fifty-three, between the Argentine Confederation and the United States regarding the free navigation of the rivers of the Republic, and the original instruments of the said ratifications having been presented, they were forthwith exchanged.

In faith whereof the undersigned, Don Juan María Gutierrez, Minister of Foreign Relations of the said Confederation, and Mr. James A. Peden, Minister Resident of the Republic of the United States of North America, have signed the present procès-verbal and have sealed the same with their personal seals.

Done in duplicate in the city of Paraná, provisional capital of the Argentine Confederation, on the day, month, and year above stated.

[Seal] Juan María Gutierrez.
[Seal] James. A. Peden

The final ratifications by the Argentine Confederation of the two treaties with the United States and the acts of exchange were taken to Washington by "Mr William E. Hines late Cashier of the United States & Paraguay Navigation Company" (D.S., 9 Despatches, Argentina, No. 6, Montevideo, January 14, 1855) and were received at the Department of State on April 9, 1855 (D.S., 15 Instructions, Argentina, 80–83, April 26, 1855). On the same day proclamations of the treaties were issued.

Compensation of Schenck and Pendleton

By act of August 4, 1854 (10 Statutes at Large, 564), provision was made for expenses of Schenck and Pendleton "at points distant from those to which they were originally accredited" and for additional compensation to them at the rate of $25 a day; in lieu of that per diem the act of March 3, 1855 (*ibid.*, 659–60), appropriated for Schenck sums of $9,000 as compensation for each of his special missions to Uruguay and to the Argentine Confederation; the same amounts were allowed by act of June 2, 1856 (11 *ibid.*, 449–50), as compensation to Pendleton for his special missions to Uruguay and to Paraguay.

Correspondence with Brazil

With a covering note of January 16, 1854, the Minister of Brazil, Francisco Ignacio de Carvalho Moreira, transmitted to Secretary of State Marcy this instruction of November 7, 1853, from the Minister of Foreign Affairs of Brazil, Antonio Paulino Limpo de Abreu, which had been previously communicated to the Secretary of State at an interview of January 12, 1854 (D.S., 3 Notes from the Brazilian Legation, revised translation from the Portuguese; printed, with the covering note, in Manning, *op. cit.*, II, 445–48):

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The treaties [1] on the free navigation of the Paraná and Uruguay Rivers concluded at San José de Flores on the 10th of July of the present year by General Urquiza, as Provisional Director of the Argentine Confederation, with the Plenipotentiaries of England and France, and on the 27th [*10th*] of the same month with the Plenipotentiary of the United States, called forth the protest [2] of the 31st of last August on the part of the Government of Buenos Aires, which was transmitted, with a separate note, to the Government of Her Britannic Majesty, to the Emperor of the French, and to the President of the United States, as the Government of His Majesty the Emperor of Brazil, our August Sovereign, was informed by the Minister and Secretary of State of the Department of Government and Foreign Relations of the Province of Buenos Aires, in a note dated the 31st of the same month of August, enclosing a copy of the treaties alluded to and another of the protest made.

Subsequently the Government of Buenos Aires published, under date of the 28th of September last, a memorandum the purpose of which was to confirm and to set forth the principles upon which the protest was founded and to insist upon the justice of the conclusions established therein. You will find, accompanying this despatch, the documents to which I refer.

I deem it my duty to call your attention to the stipulations contained in the fifth, sixth, and seventh articles of the treaties. These stipulations, if not understood in a reasonable manner according to the imprescriptible rules of justice and the principles of universal public law, may prove detrimental to the rights which Brazil possesses as a sovereign nation; and for this reason it is important not to allow them to pass unnoticed, in order that they may never be cited as precedents, acquiesced in and recognized by the Government of His Majesty the Emperor.

The fifth article reads: "The High Contracting Parties, considering that the Island of Martin Garcia may, from its position, embarrass and impede the free navigation of the Confluents of the River Plate, agree to use their influence to prevent the possession of the said Island from being retained or held by any State of the River Plate or its Confluents which shall not have given its adhesion to the principle of their free navigation."

The Government of His Majesty the Emperor does not believe that, in the provision of this article, the Government of the United States intends to deprive of the sovereignty of the island of Martín García one of the two states of the River Plata which may dispute the same, viz, the Province of Buenos Aires and the Oriental Republic of Uruguay; and even less [does it believe] that it will exercise its influence in order that the sovereignty of the island in question should devolve upon a European power or upon the United States of North America, on the supposition that neither of the states of the River Plate or of its confluents should wish to adhere to the principles of the free navigation of their inland rivers.

The injustice, in that case, would be as manifest as it would be scandalous.

The states of the River Plata and its confluents have the power to grant or to refuse the navigation of their inland rivers to non-riparian nations. It is a right that belongs to them and which they can exercise, considering only their [own] interests and circumstances. To claim the preservation of a right under a forced and non-conventional obligation, in favor of other nations, and, moreover, to threaten with a loss of territory a state which does not wish to subject itself to such obligation, would be a most intolerable abuse of power, and the Government of His Imperial Majesty is convinced that this proceeding is repugnant to those principles of sound policy which govern the acts of the Government of the United States.

The sixth article provides as follows: "If it should happen (which God forbid) that war should break out between any of the States, Republics or Provinces of the River Plate or its Confluents, the navigation of the Rivers Paraná and Uruguay shall remain free to the merchant-flag of all nations, excepting in what may relate to munitions of war, such as arms of all kinds, gunpowder, lead and cannon balls."

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[1] Cited above.

[2] For this protest and the covering note of September 30, 1853, see Manning, *op. cit.*, I, 556–64.

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The Government of His Majesty the Emperor takes it for granted that this provision is obligatory only upon the government of those states that were parties to the treaty.

Because the Imperial Government cannot renounce the right which belongs to Brazil, as a sovereign nation, to exercise the right of blockade, without restriction of place, in all cases when (which may God never allow to happen) the exercise of such right is authorized by the principles of international law and the usage of nations.

The Government of Brazil, however, has already shown that it will never resort to this means, so injurious to the commerce of neutrals, and sometimes of doubtful efficacy, except when it absolutely cannot avoid it, to vindicate its rights. The memory of the war which the Government of Brazil was obliged to sustain against the Dictator Rosas must s ill be fresh. This war terminated gloriously for Brazil and her allies, without the measure of a blockade having been resorted to at any time. It is a precedent which does us honor and which is also a proof and a guaranty of the liberal and just policy that the Government of His Majesty the Emperor will pursue in similar cases.

Lastly, the seventh article reads: "Power is expressly reserved to His Majesty the Emperor of Brazil, and the Governments of Bolivia, Paraguay, and the Oriental State of Uruguay, to become parties to the present Treaty, in case they should be disposed to apply its principles to the parts of the Rivers Paraná, Paraguay and Uruguay over which they may respectively possess fluvial rights."

To say nothing of the additional article of the Preliminary Peace Convention[1] of August 30 [*27*], 1828, the Government of the United States knows that by Article 18 of the convention[2] of May 29, 1851, and by Article 14 of the convention[3] of November 21 of the same year there is stipulated and acknowledged the right which the Empire of Brazil, the Argentine Confederation, and the Oriental Republic of Uruguay have to the free navigation of the rivers the banks of which are occupied by these nations, without any clause or condition other than what was established by the regulations for the policing and safety of said navigation.

It is therefore beyond doubt that these stipulations subsist in their plenitude and force, that the treaties concluded at San José de Flores can produce no change in the same, and that, consequently, the exercise of the rights recognized to the Empire by former pacts cannot be subject to new conditions introduced without the voice and without the consent of the Imperial Government.

Such, Mr. Minister, is the thought of the Government of His Majesty the Emperor concerning the treaties I have alluded to, and it is well that you should thus state it to the Government of the United States, endeavoring to obtain for that purpose a conference with the Secretary of State concerned, to whom you may give a copy of this despatch.

May God have you in His keeping.

The Brazilian note just quoted was at once acknowledged (see Manning, *op. cit.*, II, 175, January 25, 1854); but the Brazilian Minister asked, after some months, for a communication of the views of this Government (*ibid.*, 466, November 15, 1854). Marcy thus responded (*ibid.*, 176–77; D.S., 6 Notes to the Brazilian Legation, 112–14, November 16, 1854):

The Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of the Commander de Carvalho Moreira, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of Brazil, of yesterday's date, requesting the decision of this Government in relation to the subject of the note addressed by the Imperial Minister of Foreign Affairs to the Commander Moreira under date of 7th. November, 1853, and by him communicated to this Department.

[1] Spanish text and translation in 15 British and Foreign State Papers, 935–44.
[2] Translation in 40 *ibid.*, 1135–40.
[3] Translation in 60 *ibid.*, 383–89.

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The Undersigned has, since his brief acknowledgement of the Commander Moreira's note, on the 25th. January last, given to the despatch of His Excellency, the Brazilian Minister of Foreign Affairs, that consideration which the importance of its contents demanded.

His Excellency, in that despatch, informs Mr. Moreira of the apprehensions entertained by the Imperial Government that the stipulations contained in the fifth, sixth, and seventh articles of the Treaty between the United States and the Argentine Confederation on the 10th July 1853, "may prove detrimental to the rights which Brazil possesses as a sovereign nation"; and the conditions under which those rights and interests may be invaded, under these several articles, are fully set forth.

As these objections were based upon contingencies which might not occur, the President was unable to perceive that they were of sufficient force to justify any impediment to the ratification of the Treaty, by and with the advice and consent of the Senate of the United States. Those measures having therefore been adopted, the ratification of the Treaty has been transmitted for exchange and it is expected that it will be speedily proclaimed as the law of the land.

It cannot, however, be perceived that the articles in question trench, even in the most limited degree, upon the rights or interests of Brazil. In fact, the Brazilian Minister of Foreign Affairs himself appears to regard the stipulations referred to as only *conditionally* objectionable. He says they "may prove detrimental". It is, certainly, not within the province of the undersigned to prescribe in anticipation of supposed events, what would be the course of this government, if any of these should take place, but he takes great pleasure in conveying to Mr. Moreira the assurance that this Government is not disposed to encourage or extenuate the slightest invasion of the rights or privileges of Brazil, and the Government of His Imperial Majesty may rest satisfied that should any difference arise as to the interpretation of the Treaty, the Government of the United States will be found claiming such a construction only, as may comport with the principles of justice, with the rules of public law, and with those interests of Brazil which as a nation in amity with her she shall feel bound to respect.

The answer of Marcy was appreciatively received; and the correspondence was concluded with this note of the Brazilian Minister of November 18, 1854 (D.S., 3 Notes from the Brazilian Legation, revised translation; Manning, *op. cit.*, II, 466–68):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of Brazil, has had the honor to receive the note of the Honorable W. L. Marcy, Secretary of State of the United States, of the 16th instant, in reply to one which the undersigned had addressed to him on the day previous, in relation to the subject of the despatch of the Ministry of Foreign Affairs of Brazil dated the 7th of November last, which the undersigned had communicated to the Honorable the Secretary of State and which refers to the fifth, sixth, and seventh articles of the treaty concluded at San José de Flores in July 1853.

The undersigned appreciates most highly the sentiments of good-will and friendship which actuate the Government of the United States towards that of Brazil and which the Honorable Mr. Marcy had the kindness to express in his note; and it is very pleasing to the undersigned to know that the Government of the United States does not find anything in the three aforesaid articles of the treaty which could in the remotest degree prejudice the rights or the interests of Brazil.

In further development of this opinion, and with reference to the hypotheses contained in the despatch of the 7th of November, the Honorable the Secretary of State gives the assurance that, in the event of any difference occurring in the interpretation of that treaty, the Government of the United States will endeavor to give it only such construction as may agree with the principles of justice, the rules of public law, and those Brazilian interests which it is bound to respect as the interests of a friendly nation; and upon this point the Honorable the Secretary of State wishes the Government of His Majesty the Emperor to be perfectly at rest.

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This formal declaration on the part of the Honorable the Secretary of State, putting an end to the causes which called the attention of the Imperial Government to those articles and prompted it to consider and to point out in the aforesaid despatch the consequences that might follow from those stipulations if they were not taken in a just and reasonable sense, as the Government of the United States is disposed to take them, affords the undersigned the agreeable opportunity of transmitting to his Government the official expression of such laudable intentions and, with it, the certainty that: (1) there is nothing in the stipulations of the fifth article, respecting the island of Martín García, tending to authorize foreign occupancy of or dominion over that island; (2) the provision of the sixth article does not in any way tend to restrain Brazil with regard to the right of blockade in the River Plata and its tributaries, as is allowed to belligerent powers by international law and the practice of nations; (3) the rights acquired by the Empire to the navigation of those rivers, by virtue of its former pacts, do not undergo any change in consequence of the seventh article.

It was only with a view to securing the rights of Brazil in the execution and practical understanding of the articles aforesaid that the despatch of the 7th of November was written, and not because the Imperial Government had any purpose of interposing objections to the regular course and definitive conclusion of the treaty, or that it sought to be informed in advance as to what would be the course of the Government of the United States in those contingencies to which the note of the Honorable the Secretary of State alludes and which the undersigned, from his inability to foresee them, cannot estimate.

As, however, the Honorable the Secretary of State informs the undersigned that the Government of the United States is disposed neither to encourage nor to extenuate the least invasion of the rights and privileges of Brazil, the undersigned thinks that none of the legitimate interests of his country can be comprised in those supposed eventualities; and receiving with the utmost satisfaction the assurances which the Honorable the Secretary of State gives him on the subject, he avails himself of this occasion to renew to the Honorable Mr. Marcy the assurances of his most distinguished consideration.

Proceedings in Bolivia

On May 13, 1858, there was signed at La Paz a Treaty of Peace, Friendship, Commerce, and Navigation between the United States and Bolivia (12 Statutes at Large, 1003–22). The Plenipotentiary who negotiated and signed that treaty on behalf of the United States was John W. Dana, Minister Resident. A month after the signature Dana wrote to Secretary of State Cass to suggest that Bolivia become a party to the treaty of July 10, 1853, pursuant to Article 7 thereof; these two paragraphs are from the despatch (D.S., 2 Despatches, Bolivia, No. 71, June 13, 1858; Manning, *op. cit.*, II, 105–6):

The treaty between the United States and the Argentine Confederation, in relation to the free navigation of the tributaries of La Plata, signed July 10th 1853., provides in article 7. that Bolivia, as well as other States, may become a party to said treaty. The treaty, as it now stands, only applies to the Parana and Uruguai, but under said article 7, the adhesion of Bolivia would bind the Argentine, as well as Bolivian Govt., to apply the same principles to the Paraguay, and its tributaries the Pilcomayo and Bermejo. The Argentine Govt. has, already, granted concessions to a Co. for the navigation of the Bermejo inconsistent with the freedom of that river; but the Co. have failed to comply with the conditions of the concessions, and, if the treaty was made to apply to the river, I presume that the Govt. would refrain from their renewal, or any act inconsistent with it. The Bermejo, in its immediate aspects, is more important to our commerce than any other tributary of La Plata, because points near to the cities and provinces of Tucuman, Jujuy, Salta, and Oran in the Argentine, and Tarija in Bolivia, can be reached by that route, and their commerce, now important, secured. In discussing the provisions of the treaty recently concluded with this Govt., I proposed

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a distinct reference to the Argentine treaty, making Bolivia a party to it; but was answered, that, although Bolivia was willing and desirous to become a party, still, she could not properly do so, until *formally* invited by one of the original contracting parties; and that, on receiving such an invitation, she would give her distinct adhesion. The general principles of the Argentine treaty are also in the Bolivian, but there are matters of detail in application, in both, which can only be secured by Bolivia becoming a party to the former—especially, as I remarked above, the binding of the Argentine Govt. to apply the same free principles to the Paraguay and its tributaries.

For these reasons, and also as an indication of consideration and respect for this Govt., I would suggest that an official copy of the Argentine treaty be forwarded to this Legation, and that it be instructed to request the Bolivian Govt. to become a party to the same.

The suggestion of Dana was approved by Cass, who sent this instruction in response thereto, overlooking, however, the request of Dana for an "official copy" of the treaty with the Argentine Confederation (D.S., 1 Instructions, Bolivia, 34–35, No. 18, August 19, 1858):

In compliance with the suggestion contained in your Nº 71 of the 13th. June, last, you are authorized to invite the Government of Bolivia to give in its formal accession to the treaty of 10 July 1853, between the United States and the Argentine Confederation in accordance with the seventh article thereof.

A full Power for the purpose of such a negotiation is herewith transmitted to you.

I transmit also, as possibly useful, a translation of a declaration of accession of Bremen [1] to a Convention between Prussia and the United States which contains a similar provision for the accession of other States. The adoption of this form is of course optional with the Bolivian Government.

It is understood that your successor [2] intends leaving for his post towards the first of October. With this intimation you may be enabled by early negotiation to conclude the business hereby committed to you before his arrival.

The full power transmitted to Dana with the foregoing instruction was in this form; it will be observed that it refers to the invited act as "the adhesion of the Republic of Bolivia to the provisions" of the treaty and also as "the accession of the Government of Bolivia" to the treaty (D.S., 4 Credences, 222; it is there noted that a similar power dated September 14, 1858, was issued to John Cotton Smith, the successor of Dana; see D.S., 1 Instructions, Bolivia, 35–36, of that date):

James Buchanan, President of the United States of America,

To all to whom these presents shall come, Greeting:

Whereas, by the seventh article of the Treaty of 10 July 1853, between the United States and the Argentine Confederation for the free navigation of the rivers Paraná and Uruguay "Power is expressly reserved to his Majesty the Emperor of Brazil and the Governments of Bolivia, Paraguay, and the Oriental State of Uruguay to become parties to this treaty, in case they should be disposed to apply its principles to the parts of the rivers Paraná, Paraguay, and Uruguay, over which they may respectively possess fluvial rights"; and whereas it is deemed desirable and opportune to invite the adhesion of the Republic of Bolivia to the provisions of the Treaty aforesaid,—I, therefore, have invested John W. Dana,

[1] Printed in 18 Statutes at Large, pt. 2, Public Treaties, 92; see, under the heading "The Accessions", the editorial notes to Document 152, the convention of June 16, 1852, with Prussia and other states of the Germanic Confederation.

[2] John Cotton Smith.

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Minister Resident of the United States in the Republic of Bolivia with full and all manner of power and authority for and in the name of the United States to meet and confer with any person or persons duly authorized by the Government of that Republic, being furnished with like power and authority and with him or them to agree, treat, consult, and negotiate of and concerning the accession of the Government of Bolivia to said Treaty, and to conclude and sign the same, transmitting the same to the President of the United States for due publication thereof.

Given under my hand and the seal of the United States at Washington, this 18th. day of August, A.D. 1858, and of the Independence of the United States the 83d

(L.S.)

JAMES BUCHANAN.

By the President:
LEWIS CASS, *Secretary of State.*

The residence of the Government of Bolivia was for a time transferred to Oruro; Dana remained at La Paz; on receipt of his instructions he wrote, on October 3, 1858, this note to the Minister of Foreign Affairs of Bolivia, Lucas Mendoza de la Tapia (D.S., 2 Despatches, Bolivia, No. 74, October 12, 1858, enclosure B):

The undersigned, Minister Resident of the United States, has the honor to advise His Excellency the Minister of Exterior Relations that after the informal conference which he held with His Excellency, some months since, in relation to the treaty between the United States and the Argentine Confederation which provides for the free navigation of certain tributaries of La Plata, he advised his Govt. of the willingness of that of Bolivia to become a party to said treaty, in accordance with one of its provisions: and that, immediately on the reception of this information, his Govt. directed him to invite the Govt. of Bolivia to give its formal accession to said treaty, and transmitted to him full powers to act in the premises.

These directions and full powers the undersigned has just received; and, while he regrets his absence from the present residence of the Govt., and his consequent inability to confer personally with His Excellency, he regards the matter as one so simple in its details that it can be concluded by correspondence only.

He therefore transmits to His Excellency the Minister a copy of his full powers, requesting from him as early an attention to the subject as other duties will permit, for the reason that these full powers only apply to himself, and that he has been officially advised of the appointment of his successor, whose arrival here may be expected within two months.

This proposed accession, in the view of the undersigned, may be effected, either by a declaration of accession on the part of the Govt. of Bolivia, made by one duly authorised to execute it, or in the more formal manner of a treaty duly executed by the authorised agents of both Powers. The form which appears most proper to His Excellency will be readily adopted by the undersigned.

He would further suggest, if His Excellency determines upon a treaty as the most proper form, that he prepare and transmit a draft to the undersigned for his examination; or, if his occupations are such as to render that inconvenient, the undersigned will prepare and transmit one for the examination of His Excellency. The treaty, after having been agreed upon, could be executed, there on the one part, and here on the other. If, on the other hand, the form of a mere Declaration of accession is adopted, it will be only necessary to transmit the same, properly executed on the part of the Govt. of Bolivia, to the Prest. of the United States for publication. Whether the form be treaty or declaration, it should embody the treaty between the United States and the Argentine Confederation; and, if His Excellency finds it desirable for the undersigned to prepare the draft for a treaty, he will much oblige him by the transmission of the copy in his possession of the treaty referred to, as said treaty is not in the archives of this Legation.

These suggestions are hastily made for the purpose of eliciting the views and opinions of His Excellency the Minister upon the subject.

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It may perhaps be proper to remark, that the treaty between the United States and the Argentine Confederation, in its present state, only applies to the rivers Parana and Uruguay; but that, in accordance with its provisions, the accession of Bolivia would make it applicable to the Paraguay, and, I think, its tributaries, and thus render impossible the adoption of any exclusive policy on the part of the Argentine Govt. in relation to those waters.

There was some delay; the post between La Paz and Oruro was only weekly; Dana had no copy of the Argentine treaty; there was a change of Ministry; the Bolivian Government determined "upon the form of a simple Declaration of adhesion to the Argentine treaty, instead of giving its accession by formal treaty; and has requested me to prepare, and forward for its consideration, a draft of such Declaration", which Dana transmitted on December 4, 1858 (*ibid.*, No. 79, December 10, 1858; and see also, in *ibid.*, Nos. 74 and 76, of October 12 and 26, which are printed, the former in part, in Manning, *op. cit.*, II, 107–8); and that Government preferred, and adopted, a different form. The act of adherence was signed on December 23, 1858; and Dana reported the fact, and also the arrival of his successor, John Cotton Smith, in his despatch No. 80, of December 27, 1858 (D.S., 2 Despatches, Bolivia; Manning, *op. cit.*, II, 109–10). With his next despatch Dana transmitted the declaration and a translation thereof, reporting as follows (D.S., 2 Despatches, Bolivia, No. 81, January 12, 1859):

In my No. 80 I advised the Department that I had received the Bolivian adhesion to the Argentine treaty, but that I delayed its transmission not having time to prepare a translation. With this I send the declaration of adhesion and the translation. The declaration embodies the Argentine treaty in its Spanish version, and of this I have thought it unnecessary to give the translation, as the English original in the Department will furnish a more perfect one. It should be observed, however, that in the treaty, as copied in the declaration, the Argentine Confederation and Plenipotentiaries are first named as in the Spanish version, and, accordingly, should be first named in the translation of the treaty as forming part of the declaration, instead of following the order of the English version.

I suggested in a former despatch that I had furnished to this Govt. a form for the declaration, but I find that a different one, and in many respects not so appropriate, has been adopted. As however the objections apply to the form I have not thought it advisable to propose a change.

Accompanying my No. 74 was a copy, marked B., of my note [1] to the Minister of Exterior Relations inviting the Govt. to this adhesion. With this I transmit a copy, marked *A.*, of my note [2] to the same acknowledging the reception of the declaration of adhesion. The intermediate correspondence on the subject is merely in relation to the mode of arriving at the result, and I therefore regard it as unnecessary to encumber the Department with copies.

The original instrument is with the despatch last quoted; it reads thus (revised translation):

José María Linares

President of the Republic of Bolivia

Whereas in the seventh article of the treaty respecting the free navigation of the Paraná, Paraguay, and Uruguay Rivers, concluded the 10th of July of the

[1] Of October 3, 1858, printed above.
[2] Of January 4, 1859, not printed.

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year 1853 by the Plenipotentiaries of the United States and the Argentine Confederation and subsequently ratified by their Governments, there is expressly reserved to that of Bolivia the right to adhere to and become one of the contracting parties to this agreement in case it is disposed to apply the principles thereof to the part of any of the three rivers over which it may possess fluvial rights; the literal tenor of which treaty is as follows:

[Here follows the Spanish version of the treaty of July 10, 1853, between the United States and the Argentine Confederation]

Therefore, and considering that Bolivia is a state bordering upon the Paraguay River, and that the same liberal principles have been established for the navigation thereof as its Government has proclaimed for the navigation of its interior rivers, we have decided to give our adherence to the first eight articles of the above treaty upon the invitation of the most excellent Government of the United States, extended by the Honorable John W. Dana, Minister Resident of the same in Bolivia and furnished with full powers to negotiate and accept it; obligating ourselves to apply the principles contained in the said clauses to the navigation of the Paraguay River and its affluents. And that our adherence may have the formality and force of a binding agreement, we undertake to ratify it as soon as it shall receive the approval of Congress; designating for this act the same time and place as are indicated for the exchange of the Treaty of Friendship, Commerce, and Navigation concluded between the Plenipotentiaries of Bolivia and the United States of America the thirteenth of May of the year of the Lord one thousand eight hundred and fifty-eight.

Given, signed with our hand, sealed with the great seal of the Republic, and countersigned by the Secretary of Foreign Relations, in the city of Oruro the twenty-third day of the month of December, one thousand eight hundred and fifty-eight.

[Seal] José Mª Linares

Secretary of Foreign Relations:
Manuel Burtrago

The receipt of that instrument of adherence at the Department of State (on February 28, 1859) was not acknowledged; and there is no mention thereof or allusion thereto in subsequent instructions and despatches.

The act of Bolivia did not become definitive; it was expressly subject to ratification, following approval of the Congress of Bolivia; no record of such approval has been found; the ratification was to be delivered upon the exchange of ratifications of the treaty between the United States and Bolivia of May 13, 1858; but in that exchange, which was delayed until November 9, 1862, the act of December 23, 1858, was not included (see the editorial notes to that treaty).

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Treaty Series No. 4
10 Statutes at Large, 1005-12
18 *ibid.*, pt. 2, Public Treaties, 16-20

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ARGENTINA : JULY 27, 1853

Treaty of Friendship, Commerce, and Navigation, signed at San José July 27, 1853. Original in English and Spanish.
Submitted to the Senate December 20, 1853. (Message of December 12, 1853.) Resolution of advice and consent June 13, 1854. Ratified by the United States June 29, 1854. Ratified by the Argentine Confederation July 30, 1853, and December 20, 1854. Ratifications exchanged at Paraná December 20, 1854. Proclaimed April 9, 1855.

Treaty of Friendship, Commerce and Navigation, between the United States and the Argentine Confederation.

Commercial intercourse having been for some time established between the United States and the Argentine Confederation, it seems good for the security as well as the encouragement of such commercial intercourse and for the maintenance of good understanding between the two governments, that the relations now subsisting between them should be regularly acknowledged and Confirmed by the signing of a Treaty of Friendship, Commerce and Navigation. For this purpose they have nominated their Respective Plenipotentiaries, that is to say:

The President of the United States, Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary of the United States to Brazil, and John S. Pendleton, Chargé d'Affaires of the United

Tratado de Amistad, Comercio y Navegacion, entre la Confederacion Argentina y los Estados Unidos.

Hallándose establecidas hace tiempo relaciones comerciales entre la Confederacion Argentina y los Estados Unidos, ha parecido conveniente, asi para la seguridad y fomento de aquella correspondencia comercial, como para mantener la buena inteligencia entre ambos Gobiernos, que las relaciones que ahora existen entre ellos, sean regularmente conocidas y confirmadas por un Tratado de Amistad, Comercio y Navegacion. Con este obgeto han nombrado sus respectivos Plenipotenciarios á saber:

El Exmo. Señor Director Provisorio de la Confederacion Argentina, al Doctor Don Salvador Maria del Carril, y al Doctor Don José Benjamin Gorostiaga, y el Presidente de los Estados Unidos

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States to the Argentine Confederation;

And His Excellency the Provisional Director of the Argentine Confederation, Doctor Don Salvador Maria del Carril and Doctor Don José Benjamin Gorostiaga;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

There shall be perpetual amity between the United States and their citizens on the one part, and the Argentine Confederation and its citizens on the other part.

ARTICLE II.

There shall be between all the territories of the United States and all the territories of the Argentine Confederation a reciprocal freedom of Commerce. The citizens of the two countries respectively shall have liberty, freely and securely, to come with their ships and cargoes to all places, ports and rivers, in the territories of either, to which other foreigners, or the ships or cargoes of any other foreign nation or state, are or may be permitted to come; to enter into the same, and to remain and reside in any part thereof, respectively; to hire and occupy houses and warehouses for the purposes of their residence and commerce; to trade in all kinds

á Roberto C. Schenck Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos á la Corte del Brasil y á Juan S. Pendleton Encargado de Negocios de los Estados Unidos cerca de la Confederacion Argentina.

Quienes, despues de haberse comunicado sus respectivos plenos poderes, hallados en buena y debida forma, han convenido en los articulos siguientes:

ARTÍCULO I.

Habrá amistad perpétua entre la Confederacion Argentina y sus ciudadanos por una parte, y los Estados Unidos y sus ciudadanos por la otra parte.

ARTÍCULO II.

Habrá una libertad recíproca de comercio entre todos los territorios de la Confederacion Argentina y todos los territorios de los Estados Unidos. Los ciudadanos de ambos paises podrán libremente y con toda seguridad ir con sus buques y cargas á todos aquellos parages, puertos y rios en sus respectivos territorios, á donde sea ó fuese permitido llegar á los buques ó cargas de cualquier otra nacion ó estado; podrán entrar, permanecer y residir en cualquiera parte de los dichos territorios respectivamente; podrán alquilar y ocupar casas y almacenes para su residencia y comercio; podrán negociar en toda clase de productos, manufacturas y mercancias de

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of produce, manufactures and merchandize of lawful commerce; and generally to enjoy in all their business the most complete protection and security, subject to the general laws and usages of the two countries respectively. In like manner the respective ships of war, and post-office or passenger packets of the two countries shall have liberty, freely and securely, to come to all harbors, rivers and places, to which other foreign ships of war and packets are or may be permitted to come; to enter into the same, to anchor and remain there and refit, subject always to the laws and usages of the two countries respectively.

comercio legal; y gozarán en todas sus ocupaciones de la mas completa proteccion y seguridad, sujetas á las leyes generales y costumbres de las dos naciones respectivas. Los buques de guerra de ambas naciones, buques correos y paquetes podrán asi mismo llegar libremente y con toda seguridad á todos los puertos, rios y puntos á donde entren ó les sea permitido entrar á los buques de guerra ó paquetes de cualquiera otra nacion; podrán entrar, anclar, permanecer y repararse, sujetos siempre á las leyes y costumbres de las dos naciones respectivas.

ARTICLE III.

The two high contracting parties agree that any favor, exemption, privilege or immunity whatever, in matters of commerce or navigation, which either of them has actually granted, or may hereafter grant, to the citizens or subjects of any other government, nation, or state, shall extend, in identity of cases and circumstances, to the citizens of the other contracting party, gratuitously, if the concession in favor of that other government, nation or state shall have been gratuitous—or, in return for an equivalent compensation, if the concession shall have been conditional.

ARTÍCULO III.

Las dos altas partes contratantes, convienen que cualquier favor, exencion, privilegio ó inmunidad que una de ellas haya concedido ó conceda mas adelante en punto á comercio ó navegacion á los ciudadanos ó súbditos de cualquier otro Gobierno, nacion ó estado, será estensivo en igualdad de casos y circunstancias á los ciudadanos de la otra parte contratante, y gratuitamente, si la concesion en favor de ese otro Gobierno, nacion ó estado ha sido gratuita, ó por una compensacion equivalente, si la concesion fué condicional.

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ARTICLE IV.

No higher or other duties shall be imposed on the importation into the territories of either of the two contracting parties, of any article, of the growth, produce or manufacture of the territories of the other contracting party, than are or shall be payable on the like article of any other foreign country; nor shall any other or higher duties or charges be imposed in the territories of either of the contracting parties on the exportation of any article to the territories of the other, than such as are or shall be payable on the exportation of the like article to any other foreign country; nor shall any prohibition be imposed upon the importation or exportation of any article of the growth, produce or manufacture of the territories of either of the contracting parties, to or from the territories of the other, which shall not equally extend to the like article of any other foreign country.

ARTICLE V.

No other or higher duties or charges on account of tonnage, light or harbor dues, pilotage, salvage in case of average or shipwreck, or any other local charges, shall be imposed, in the ports of the two contracting parties, on the vessels of the other, than those payable in the same ports on its own vessels.

ARTÍCULO IV.

No se impondrán ningunos otros ni mayores derechos, en los territorios de cualquiera de las dos partes contratantes á la importacion de los artículos de produccion natural, industrial ó fabril de los territorios de la otra parte contratante, que los que se pagan ó pagáren por iguales artículos de cualquier otro pais estrangero: ni se impondrá otros ni mas altos derechos en los territorios de cualquiera de las partes contratantes á la exportacion de cualquier artículo á los territorios de la otra, que los que se pagan ó pagáren por la exportacion de iguales artículos á cualquier otro pais estrangero; ni se impondrá prohibicion alguna á la importacion de cualesquiera artículos de produccion natural, industrial ó fabril de los territorios de una de las partes contratantes á los territorios ó de los territorios de la otra, que no se estiendan tambien á iguales artículos de cualquier otro pais estrangero.

ARTÍCULO V.

No se impondrán otros ni mas altos derechos por tonelage, farola, puerto, práctico, salvamento en caso de averia ó naufragio, ó cualesquiera otros gastos locales en ninguno de los puertos de cualquiera de las dos partes contratantes á los buques de la otra, que aquellos que se pagan en los mismos puertos por sus propios buques.

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ARTICLE VI.

The same duties shall be paid and the same drawbacks and bounties allowed upon the importation or exportation of any article into or from the territories of the United States, or, into or from the territories of the Argentine Confederation, whether such importation or exportation be made in vessels of the United States, or, in vessels of the Argentine Confederation.

ARTÍCULO VI.

Se pagarán los mismos derechos, y se concederán los mismos descuentos y premios por la importacion ó exportacion de cualquier artículo al territorio ó del territorio de la Confederacion Argentina, ó al territorio ó del territorio de los Estados Unidos, ya sea que dicha importacion ó exportacion se efectué en buques de la Confederacion Argentina ó en buques de los Estados Unidos.

ARTICLE VII.

The contracting parties agree to consider and treat as vessels of the United States and of the Argentine Confederation, all those which, being furnished by the competent authority with a regular passport or sea-letter, shall, under the then existing laws and regulations of either of the two governments, be recognized fully and *bona fide* as national vessels by that country to which they respectively belong.

ARTÍCULO VII.

Las partes contratantes se convienen en considerar y tratar como buques de la Confederacion Argentina, y de los Estados Unidos, todos aquellos que hallándose munidos por la competente autoridad, con un pasavante en debida forma ó patente, puedan, segun las leyes y reglamentos entonces existentes, ser reconocidos plenamente y *bona fide* como buques nacionales por aquel pais al que respectivamente pertenezcan.

ARTICLE VIII.

All merchants, commanders of ships and others, citizens of the United States, shall have full liberty, in all the territories of the Argentine Confederation, to manage their own affairs themselves, or, to commit them to the management of whomsoever they please, as broker, factor, agent or interpreter; nor shall they be obliged to employ any other per-

ARTÍCULO VIII.

Todos los Comerciantes, Comandantes de buque y demas Ciudadanos de la Confederacion Argentina, tendrán plena libertad en todos los territorios de los Estados Unidos, para cuidar por si mismos de sus propios negocios, ó para confiarlos á la direccion de quien mejor les parezca como corredor factor, agente ó intérprete; y no serán obligados á em-

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sons in those capacities, than those employed by citizens of the Argentine Confederation, nor to pay them any other salary or remuneration than such as is paid in like cases by citizens of the Argentine Confederation. And absolute freedom shall be allowed in all cases to the buyer and seller to bargain and fix the price of any goods, wares or merchandize imported into or exported from the Argentine Confederation, as they shall see good, observing the laws and established customs of the country. The same rights and privileges, in all respects, shall be enjoyed in the territories of the United States, by the citizens of the Argentine Confederation. The citizens of the two contracting parties shall reciprocally receive and enjoy full and perfect protection for their persons and property and shall have free and open access to the Courts of justice in the said countries respectively for the prosecution and defence of their just rights, and they shall be at liberty to employ in all cases such advocates, attorneys or agents as they may think proper, and they shall enjoy in this respect the same rights and privileges therein as native citizens.

ARTICLE IX.

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandize, goods and effects,

plear otras personas para aquellos obgetos, que aquellas empleadas por los Ciudadanos de los Estados Unidos, ni á pagarles otro salario ó remuneracion que aquella que, en iguales casos se paga por los Ciudadanos de dichos Estados Unidos. Y se concede absoluta libertad en todos los casos al comprador y vendedor para tratar y fijar el precio, como mejor les parezca, de cualquier efecto, género ó mercancia importado ó exportado de los Estados Unidos, con observancia de las leyes y usos establecidos en el pais. Los mismos derechos y privilegios en todos respectos se conceden en los territorios de la Confederacion Argentina á los Ciudadanos de los Estados Unidos. Los Ciudadanos de las dos partes contratantes recibirán y disfrutarán reciprocamente la mas completa y perfecta proteccion para sus personas y bienes, y tendrán acceso franco y libre á los tribunales de justicia en los respectivos paises para la prosecusion y defenza de sus justos derechos, y tendrán la libertad de emplear en todos casos los abogados, apoderados ó agentes que mejor les parezca, y á este respecto tendrán los mismos derechos y privilegios que los Ciudadanos nacionales.

ARTÍCULO IX.

En todo lo relativo á la policia de puertos, carga y descarga de buques, seguridad de las mercaderias, géneros y efectos á la adquisi-

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and to the acquiring and disposing of property of every sort and denomination either by sale, donation, exchange, testament, or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens, and they shall not be charged, in any of those respects, with any higher imposts or duties than those which are paid or may be paid by native citizens, submitting of course to the local laws and regulations, of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul general or Consul of the nation to which the deceased belonged, or the representative of such Consul general or Consul, in his absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs.

cion y disposicion de la propiedad de toda clase y denominacion, ya sea por venta, donacion, permuta, testamento ó de cualquier otro modo que sea, como tambien á la administracion de justicia, los ciudadanos de las partes contratantes gozarán reciprocamente de los mismos privilegios, prerrogativas y derechos que los ciudadanos nacionales; y no se les gravará en ninguno de esos casos con impuestos ó derechos mayores que aquellos que pagan ó pagáren los Ciudadanos nacionales, sujetos siempre á las leyes locales y reglamentos de cada pais respectivamente. Si algun Ciudadano de cualquiera de las dos partes contratantes falleciera intestado en alguno de los territorios de la otra, el Consul General ó Consul de la nacion á la que pertenezca el finado, ó sea el representante de dicho Consul General ó Consul, en ausencia de estos, tendrá el derecho de intervenir en la posesion, administracion y liquidacion judicial de los bienes del finado, conforme á las leyes del pais, en beneficio de sus acreedores y herederos legales.

ARTICLE X.

The citizens of the United States residing in the Argentine Confederation, and the citizens of the Argentine Confederation residing in the United States, shall be exempted from all com-

ARTÍCULO X.

Los Ciudadanos de la Confederacion Argentina residentes en los Estados Unidos, y los Ciudadanos de los Estados Unidos residentes en la Confederacion Argentina, serán exentos de todo

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pulsory military service whatsoever, whether by sea or by land, and from all forced loans, requisitions or military exactions; and they shall not be compelled, under any pretext whatever, to pay any ordinary charges, requisitions or taxes greater than those that are paid by native citizens of the contracting parties respectively.

ARTICLE XI.

It shall be free for each of the two contracting parties to appoint Consuls, for the protection of trade, to reside in any of the territories of the other party; but, before any Consul shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent; and either of the contracting parties may except from the residence of Consuls such particular places as they judge fit to be excepted.

The archives and papers of the Consulates of the respective governments shall be respected inviolably, and under no pretext whatever shall any magistrate, or, any of the local authorities, seize, or in any way interfere with them.

The Diplomatic agents and Consuls of the Argentine Confederation shall enjoy in the territories of the United States, whatever privileges, exemptions and immunities are, or shall be granted

servicio militar obligatorio, ya sea por mar ó por tierra, asi como de todo empréstito forzoso, requisiciones y ausilios militares; ni serán compelidos por ningun pretesto que sea, á pagar ningunas cargas ordinarias, requisiciones ó impuestos mayores que los que pagan los Ciudadanos naturales de las partes contratantes respectivamente.

ARTÍCULO XI.

Cada una de las dos partes contratantes podrá nombrar Consules para la proteccion de su comercio, con residencia en cualquiera de los territorios de la otra parte; pero antes de funcionar como tales, serán aprobados y admitidos en la forma de costumbre, por el gobierno cerca del que están acreditados; y cualquiera de las partes contratantes podrá esceptuár de la residencia de Consules, aquellos lugares particulares que juzgue conveniente esceptuár.

Los archivos y papeles de los Consulados de los respectivos gobiernos, serán inviolablemente respetados, y bajo ningun pretesto podrá magistrado alguno, ni autoridad local alguna apoderarse de dichos archivos ó papeles, ni tener, de modo alguno, la menor ingerencia en ellos.

Los Agentes Diplomáticos y Consules de los Estados Unidos gozarán en los territorios de la Confederacion Argentina, de todos los privilegios, exenciones é inmunidades que se conceden á

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to agents of the same rank belonging to the most favored nation; and in like manner, the diplomatic agents and Consuls of the United States, in the territories of the Argentine Confederation, shall enjoy, according to the strictest reciprocity, whatever privileges exemptions and immunities, are, or may be granted in the Argentine Confederation to the diplomatic agents and Consuls of the most favored nation.

los agentes del mismo rango de la nacion mas favorecida; y de igual modo, los Agentes Diplomáticos y Consules de la Confederacion Argentina en los territorios de los Estados Unidos gozarán, conforme á la mas escrupulosa reciprocidad, de todos los privilegios, exenciones é inmunidades que se concede ó se concedan á los diplomáticos ó Consules de la nacion mas favorecida.

ARTICLE XII.

For the better security of commerce between the United States and the Argentine Confederation, it is agreed, that if at any time any interruption of friendly commercial intercourse, or any rupture, should unfortunately take place between the two contracting parties, the citizens of either of them residing in the territories of the other, shall have the privilege of remaining and continuing their trade or occupation therein, without any manner of interruption, so long as they behave peaceably and commit no offence against the laws; and their effects and property, whether entrusted to individuals or to the state, shall not be liable to seizure or sequestration, or to any other demands than those which may be made upon the like effects or property belonging to the native inhabitants of the state in which such citizens may reside.

ARTÍCULO XII.

Para la mayor seguridad del comercio entre la Confederacion Argentina y los Estados Unidos, se estipula que, en cualquier caso en que por desgracia aconteciese alguna interrupcion de las amigables relaciones de comercio, ó un rompimiento entre las dos partes contratantes, los Ciudadanos de cualquiera de ellas, residentes en los territorios de la otra, tendrán el privilegio de permanecer y continuar su tráfico ú ocupacion en ellos, sin interrupcion alguna, en tanto que se condujeren con tranquilidad, y no quebrantaren las leyes de modo alguno; y sus efectos y propiedades, ya fuesen confiados á particulares ó al Estado, no estarán sujetas á embargo ni secuestro, ni á ninguna otra exaccion que aquellas que puedan hacerse á igual clase de efectos ó propiedades pertenecientes á los naturales habitantes

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del Estado en que dichos ciudadanos residiesen.

ARTICLE XIII.

The citizens of the United States, and the citizens of the Argentine Confederation, respectively, residing in any of the territories of the other party, shall enjoy in their houses, persons and properties, the full protection of the government.

They shall not be disturbed, molested, nor annoyed in any manner on account of their religious belief, nor in the proper exercise of their peculiar worship, either within their own houses, or, in their own Churches or chapels; which they shall be at liberty to build and maintain, in convenient situations, to be approved of by the local government, interfering in no way with, but respecting the religion and customs of the country in which they reside. Liberty shall also be granted to the citizens of either of the contracting parties, to bury those who may die in the territories of the other, in burial places of their own, which in the same manner may be freely established & maintained.

ARTÍCULO XIII.

Los Ciudadanos de la Confederacion Argentina y los Ciudadanos de los Estados Unidos residentes respectivamente en el territorio de una de las partes contratantes, gozarán en sus casas, personas y propiedades de la proteccion completa del gobierno.

No serán inquietados, molestados, ni incomodados de manera alguna con motivo de sus creencias religiosas, ni en el ejercicio de su culto particular, ya sea dentro de sus propias casas, ó en sus propias iglesias ó capillas, las que podrán libremente edificar y mantener en los sítios convenientes que sean aprobados por el gobierno local, respetando la religion y costumbres del pais donde tengan su residencia. Tambien será permitido enterrar á los ciudadanos que murieren de ambas partes contratantes, en el territorio de la otra, en sus propios cementerios, que podrán del mismo modo libremente establecer y conservar.

ARTICLE XIV.

The present Treaty shall be ratified on the part of the Government of the United States within fifteen months from the date; and within three days by His Excellency the Provisional Director of

ARTÍCULO XIV.

El presente Tratado será ratificado por el Exelentícimo Señor Director Provisorio de la Confederacion Argentina, á los tres dias de la fecha, debiendo presentarlo para su approbacion al primer

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the Argentine Confederation, who will also present it to the first Legislative Congress of the Confederation for their approval.

The ratifications shall be exchanged at the seat of Government of the Argentine Confederation within the term of eighteen months.

In witness whereof the respective Plenipotentiaries have signed this Treaty, and affixed thereto their seals.

Done at San José on the twenty seventh day of July in the year of Our Lord one thousand eight hundred & fifty three.

[Seal] Robt C. Schenck
[Seal] Jn° Pendleton
[Seal] Salvador Mª del Carril
[Seal] José B Gorostiaga

Congreso Legislativo de la Confederacion, y por parte del gobierno de los Estados Unidos, dentro de quince meses.

Las ratificaciones deberán canjearse á los diez y ocho meses en el lugar de la residencia del Gobierno de la Confederacion Argentina.

En fé de lo cuál, los Plenipotenciarios respectivos han firmado este Tratado y le han puesto sus sellos.

Hecho en San José el dia veintisiete de Julio del año de nuestro Señor, mil ochocientos cincuenta y tres. (Nota—En el renglon quince del Artículo doce *"aquellas que"* entrerrenglores—vale.)[1]

[Seal] Salvador Mª del Carril
[Seal] José B. Gorostiaga
[Seal] Robt C. Schenck
[Seal] Jn° Pendleton

NOTES

This treaty of July 27, 1853, and the one preceding (Document 160), also with the Argentine Confederation, the Treaty for the Free Navigation of the Rivers Paraná and Uruguay, signed at San José de Flores July 10, 1853, are so intimately connected in respect both of time and of circumstance that the two are considered together in the editorial notes to Document 160.

Neither of the two treaties contains any clause of termination or denunciation; and both remain (January 1, 1941) in force.

Article 9

In an opinion citing conflicting decisions of various State courts, the Supreme Court held in *Rocca* v. *Thompson*, 223 U.S. 317–34, at page 334 (decided February 19, 1912), that "there was no purpose in the Argentine treaty to take away from the States the right of local administration provided by their laws, upon the estates of

[1] This note of the interlineation of two words in the fifteenth line of Article 12 of the original, refers to the last two words in the twenty-second line of the Spanish of that article as above printed.

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deceased citizens of a foreign country, and to commit the same to the consuls of such foreign nation, to the exclusion of those entitled to administer as provided by the local laws of the States within which such foreigner resides and leaves property at the time of decease".

Proposed Additional Article

An additional article (on the subject of deserting seamen) to the treaty of July 27, 1853, was signed at Buenos Aires on June 23, 1884; and a protocol of an additional clause to that additional article was there signed on June 25, 1885, after the additional article had been submitted to the Senate and withdrawn (see Executive Journal, XXIV, 443; XXV, 47). The additional article and the additional clause were submitted to the Senate on December 14, 1886, after they had been approved by the Congress and President of the Argentine Republic (*ibid.*, 623; texts and other papers are in Senate Confidential Executive Document A, 49th Congress, 2d session, 85 Regular Confidential Documents, 941–46); advice and consent of the Senate were given on January 7, 1887, subject to nine amendments of minor importance, seven of which were to strike out the character "&" and insert in lieu thereof the word "and" (Executive Journal, XXV, 686–87); and ratification by the United States followed on January 29, 1887. The additional article with the additional clause failed to go into force (D.S., Unperfected A).

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Treaty Series No. 17
10 Statutes at Large, 1022-26
18 *ibid.*, pt. 2, Public Treaties, 42-44

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BAVARIA : SEPTEMBER 12, 1853

Convention for the Mutual Extradition of Fugitives from Justice in Certain Cases, signed at London September 12, 1853. Original in English and German.
Submitted to the Senate December 20, 1853. (Message of December 12, 1853.) Resolution of advice and consent, with amendment, July 12, 1854. Ratified by the United States July 24, 1854. Ratified by Bavaria September 20, 1854. Ratifications exchanged at London November 1, 1854. Proclaimed November 18, 1854.

Convention for the mutual extradition of fugitives from justice, in certain cases, concluded between the Government of the United States, on the one part, and the Kingdom of Bavaria on the other part.

The United States of America and His Majesty, the King of Bavaria, actuated by an equal desire, to further the administration of justice and to prevent the commission of crimes in their respective countries, taking into consideration, that the increased means of communication between Europe and America facilitate the escape of offenders, and that, consequently provision ought to be made, in order that the ends of justice shall not be defeated, have determined to conclude an arrangement destined to regulate the course to be observed in all cases with reference to the extradition of such individuals, as

Vertrag zwischen den Vereinigten Staaten einerseits und dem KönigreicheBayern andererseits wegen der in gewissen Fällen zu gewährenden gegenseitigen Auslieferung der vor der Justiz flüchtigen Verbrecher.

Die Vereinigten Staaten von Nord-Amerika und Seine Majestät der König von Bayern, von dem gleichen Wunsche beseelt, in den beiderseitigen Staaten die Verwaltung der Rechtspflege und die Verhütung von Verbrechen zu befördern, in Erwägung, daß die verbesserten Verkehrs-Mittel zwischen Europa und Amerika das Entkommen von Verbrechern erleichtern und daß es daher einer gemeinschaftlichen Vorsorge bedarf, damit nicht die Zwecke der Gerechtigkeit vereitelt werden, dann in Berücksichtigung der Verfassung und Gesetzgebung Bayern's, welche es der Bayerischen Regierung nicht gestatten

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having committed any of the offences, hereafter enumerated, in one Country, shall have taken refuge within the territories of the other. The constitution and laws of Bavaria, however, not allowing the Bavarian Government to surrender their own subjects for trial before a Foreign Court of Justice, a strict reciprocity requires, that the Government of the United States shall be held equally free from any obligation to surrender Citizens of the United States.

ihre eigenen Unterthanen zur Aburtheilung vor fremden Gerichtshöfen auszuliefern, so wie in Berücksichtigung des Grundsatzes genauer Reciprocität, nach welchem auch die Regierung der Vereinigten Staaten eine Verbindlichkeit zur Auslieferung von Bürgern der Vereinigten Staaten gegenüber der Bayerischen Regierung nicht eingehen soll, haben Sich entschlossen eine Uebereinkunft abzuschließen, welche in allen Fällen zur Richtschnur des Verfahrens hinsichtlich der Auslieferung, solcher Personen dienen soll, welche in dem einen Lande gewisse hiernach namentlich aufgezählten Verbrechen verübt und sich sodann in das Gebiet des andern Staates geflüchtet haben.

For which purposes the high contracting Powers have appointed as their Plenipotentiaries:

The President of the United States, James Buchanan, Envoy extraordinary and Minister plenipotentiary of the United States at the Court of the united Kingdom of Great Britain and Ireland.

His Majesty the King of Bavaria, Augustus Baron de Cetto, His said Majesty's Chamberlain, Envoy extraordinary, and Minister plenipotentiary at the Court of Her Majesty, the Queen of the united Kingdom of Great Britain and Ireland, Knight Commander of the Order for merit of the Bavarian Crown and of the order for Merit of St. Michael, Knight

Zu diesem Zwecke haben die hohen contrahirenden Theile zu Ihren Bevollmächtigten ernannt:

Der Präsident der Vereinigten Staaten, James Buchanan, außerordentlichen Gesandten und bevollmächtigten Minister der Vereinigten Staaten am Hofe des vereinigten Königreichs von Großbritanien und Irland.

Seine Majestät, der König von Bayern, Herrn August Freiherrn von Cetto, Allerhöchst Ihren Kämmerer, außerordentlichen Gesandten und bevollmächtigten Minister an dem Hofe Ihrer Großbritanischen Majestät, Commenthur des Verdienst-Ordens der Bayerischen Krone, und des Verdienst-Ordens vom heiligen Michael, Großkreutz des König-

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Grand Cross of the royal Grecian Order of our Saviour.

who after reciprocal communication of their respective full powers, found in good and due form, have agreed to the following Articles.

ARTICLE I.

The Government of the United States, and the Bavarian Government promise and engage, upon mutual requisitions by them or their Ministers, officers or authorities respectively made, to deliver up to justice all persons, who being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication, or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party shall seek an asylum, or shall be found within the territories of the other: provided, that this shall only be done upon such evidence of criminality, as according to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges, and other magistrates of the two Governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a

lich-Griechischen Erlöser-Ordens.

welche nach gegenseitiger Mittheilung ihrer einschlägigen, in guter und gehöriger Form befundenen Vollmachten über folgende Artikel übereingekommen sind.

ARTIKEL I.

Die Regierung der Vereinigten Staaten und die Königlich Bayerische Regierung versprechen und machen sich verbindlich, auf gegenseitige Requisitionen, welche respective sie selbst, oder ihre Gesandten, Beamten, oder Behörden erlassen, alle Individuen der Justiz auszuliefern, welche beschuldigt, das Verbrechen des Mordes, oder eines Angriffs in mörderischer Absicht, oder des Seeraubes, oder der Brandstiftung, oder des Raubes, oder der Fälschung, oder des Ausgebens falscher Documente, oder der Verfertigung oder Verbreitung falschen Geldes, sei es gemünztes oder Papiergeld, oder des Defectes, oder der Unterschlagung öffentlicher Gelder innerhalb der Gerichtsbarkeit eines der beiden Theile begangen zu haben, in dem Gebiete des anderen Theiles eine Zuflucht suchen oder dort aufgefunden werden: mit der Beschränkung jedoch, daß dieß nur auf solche Beweise für die Strafbarkeit geschehen soll, welche nach den Gesetzen des Ortes, wo der Flüchtling, oder das so beschuldigte Individuum aufgefunden wird, dessen Verhaftung

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warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end, that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party, who makes the requisition and receives the fugitive.

ARTICLE II.

The Stipulations of this Convention shall be applied to any other State of the German Confederation, which may hereafter declare its accession thereto.

und Stellung vor Gericht rechtfertigen würden, wenn das Verbrechen oder Vergehen dort begangen wäre; und die respectiven Richter und andere Behörden der beiden Regierungen sollen Macht, Befugniß und Autorität haben, auf eidlich erhärtete Angabe, einen Befehl zur Verhaftung des Flüchtlings oder so beschuldigten Individuums zu erlassen, damit er vor die gedachten Richtern oder andern Behörden zu dem Zwecke gestellt werde, daß der Beweis für die Strafbarkeit gehört und in Erwägung gezogen werde: und wenn bei dieser Vernehmung der Beweis für ausreichend zur Aufrechthaltung der Beschuldigung erkannt wird, so soll es die Pflicht des prüfenden Richters, oder der Behörde sein, selbigen für die betreffende executive Behörde festzustellen, damit ein Befehl zur Auslieferung eines solchen Flüchtlings erlassen werden könne.

Die Kosten einer solchen Verhaftung und Auslieferung sollen von dem Theile getragen und erstattet werden, welcher die Requisition erläßt und den Flüchtling in Empfang nimmt.

ARTIKEL II.

Die Bestimmungen dieser Uebereinkunft sollen auf jeden andern Staat des deutschen Bundes Anwendung finden, der später seinen Beitritt zu derselben erklärt.

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ARTICLE III.

None of the contracting parties shall be bound, to deliver up its own citizens or subjects under the Stipulations of this Convention.

ARTIKEL III.

Keiner der contrahirenden Theile soll gehalten sein, in Gemäßheit der Bestimmungen dieser Uebereinkunft, seine eigenen Bürger oder Unterthanen auszuliefern.

ARTICLE IV.

Whenever any person, accused of any of the crimes, enumerated in this Convention, shall have committed a new crime in the territories of the State, where he has sought an asylum, or shall be found, such person shall not be delivered up under the Stipulations of this Convention, until he shall have been tried and shall have received the punishment, due to such new crime, or shall have been acquitted thereof.

ARTIKEL IV.

Wenn ein Individuum, welches eines der in dieser Uebereinkunft aufgezählten Verbrechen angeklagt ist, ein neues Verbrechen in dem Gebiete des Staates begangen haben sollte, wo er eine Zuflucht gesucht hat, oder aufgefunden wird, so soll ein solches Individuum nicht eher in Gemäßheit der Bestimmungen dieser Uebereinkunft ausgeliefert werden, als bis dasselbe vor Gericht gestellt worden sein und die auf ein solches neues Verbrechen gesetzte Strafe erlitten haben, oder freigesprochen worden sein wird.

ARTICLE V.

The present Convention shall continue in force until the First of January One thousand eight hundred and fifty eight, and if neither party shall have given to the other six months previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months, after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to

ARTIKEL V.

Die gegenwärtige Uebereinkunft soll bis zum ersten Januar Eintausend achthundert und acht und fünfzig in Kraft bleiben, und wenn kein Theil dem andern sechs Monate vorher Mittheilung von seiner Absicht macht, dieselbe dann aufzuheben, so soll sie ferner in Kraft bleiben bis zu dem Ablaufe von zwölf Monaten, nachdem einer der hohen contrahirenden Theile dem andern von einer solchen Absicht Kenntniß gegeben, wobei jeder der hohen contrahirenden Theile sich das Recht

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the other at any time after the expiration of the said First day of January One thousand, eight hundred and fifty eight.

ARTICLE VI.

The present Convention shall be ratified by the President by and with the advice and consent of the Senate of the United States and by the Government of Bavaria and the ratifications shall be exchanged in London within fifteen months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this Convention and have hereunto affixed their Seals.

Done in duplicate in London the twelfth day of September One thousand, eight hundred and fifty three and the seventy eighth year of the Independance of the United States.

JAMES BUCHANAN [Seal]
A DE CETTO [Seal]

vorbehält, dem andern eine solche Mittheilung zu jeder Zeit nach dem Ablaufe des gedachten ersten Januars Eintausend achthundert und acht und fünfzig zugehen zu lassen.

ARTIKEL VI.

Die gegenwärtige Uebereinkunft soll ratificirt werden von dem Präsidenten unter und mit der Genehmigung und Zustimmung des Senates der Vereinigten Staaten und von der Bayerischen Regierung, und die Ratificationen sollen zu London innerhalb fünfzehn Monaten von dem heutigen Datum, oder wo möglich früher ausgewechselt werden.

Zu Urkunde dessen haben die respectiven Bevollmächtigten diese Uebereinkunft unterzeichnet und hierunter ihre Siegel beigedrückt.

Zu zweifacher Ausfertigung geschehen zu London den zwölften September des Jahres Eintausend achthundert und drei und fünfzig, und im acht und siebzigsten Jahre der Unabhängigkeit der Vereinigten Staaten.

JAMES BUCHANAN [Seal]
A DE CETTO [Seal]

NOTES

This convention of September 12, 1853, was signed in duplicate (see the final clause); the example in the treaty file is written in English and German, with the English on the left pages. As may be seen from the printed text, the United States has therein naming precedence throughout in both versions.

Among the other file papers are the attested Senate resolution of July 12, the duplicate United States instrument of ratification of

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July 24, and the original proclamation of November 18, 1854. These are in customary form. The protocol of exchange of ratifications at London on November 1, 1854, is written in English and German, the former in the left columns, reading as follows:

Protocol of Exchange

The Undersigned have met together this day for the purpose of exchanging the Acts of ratification of the Convention concluded at London on the 12th of September 1853 between the United States of America and His Majesty the King of Bavaria for the mutual extradition of Criminals fugitives from justice.

The said acts of ratification having been carefully compared and found to be in due and binding form, the Undersigned have proceeded to exchange them in the usual Way.

In faith whereof they have signed in duplicate the present Protocol and affixed thereto their Seals.

Done in London the first day of November One thousand eight hundred and fifty four.

[Seal] JAMES BUCHANAN
[Seal] A v CETTO

Also in the file is the ratification of the King of Bavaria, written in German. The included text of the convention has the German in the left and the English in the right columns, and therein Bavaria is named first throughout in both versions, with the indicated signatures of the Bavarian Plenipotentiary above those of the Plenipotentiary of the United States. Accompanying the instrument of ratification is a translation thereof furnished by the Plenipotentiary of Bavaria at the time of the exchange (D.S., 66 Despatches, Great Britain, No. 48, November 3, 1854), literally of this tenor:

We Maximilian by the Grace of God King of Bavaria &c make known and acknowledge, that We have made Ourselves acquainted with the Convention, which has been signed in London on the 12th day of September last Year by Our Plenipotentiary and the Plenipotentiary of the President of the United States of America for the mutual extradition of Criminals fugitives from justice, which Convention is word for word as follows:

& & &

Having examined the preceding Convention We accept of and ratify the same and promise faithfully to execute and observe and cause to be executed and observed the stipulations contained therein, on which occasion We find Ourselves determined, and this in accordance with the declaration given to the same effect by the Government of the United States of North-America, to extend the term for the exchange of ratifications from nine months, as originally fixed in the VIth Article of the preceding Convention, to fifteen months from the day, on which the Convention has been signed.

In faith whereof We have signed with Our own hand the present act of ratification and caused to be affixed thereto Our Royal seal.

Done and issued at Berchtesgaden the 20th day of the Month of September in the Year of our Lord one thousand eight hundred and fifty four and of Our reign the seventh.

(Signed) MAXIMILIAN

Countersigned BARON VAN DER PFORTEN
By Order of the King
the Privy Secretary
MAYER.

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There is the formal statement in the preamble of the "reciprocal communication" of the full powers. That given to James Buchanan, Minister at London, under date of July 6, 1853, is in customary form (D.S., 3 Credences, 494); but there is nothing further of record regarding the full power of the Plenipotentiary of Bavaria, Baron August von Cetto.

The Negotiations

The extradition convention with Prussia and nineteen other German states, of June 16, 1852 (Document 152), was open to accession on the part of "any other State of the Germanic Confederation" (Article 2); by July 1854 six German states had acceded to the convention of 1852 (see the notes to Document 152 for these and for a list of the members of the Germanic Confederation); certain of the nine remaining members of the Germanic Confederation preferred to make separate extradition conventions with the United States rather than to accede to the 1852 convention; such separate extradition conventions made with states of the Germanic Confederation were four: this convention with Bavaria of September 12, 1853; that with Hanover of January 18, 1855 (Document 172); that with Austria of July 3, 1856 (11 Statutes at Large, 691–94); and that with Baden of January 30, 1857 (*ibid.*, 713–17).

Before the signing of the convention of 1852 with Prussia and other German states (Document 152), the Bavarian Minister at London, Baron August von Cetto, wrote on June 2, 1852, to Abbott Lawrence, American Minister at the same capital, in these terms (D.S., 63 Despatches, Great Britain, No. 185, June 3, 1852, enclosure):

> I am instructed by my Government to make known to you his wish and intention of concluding with the United States a Convention for the mutual delivery of criminals fugitive from justice, and to request that you will be kind enough to undertake communicating upon the subject with the President and his confidential advisers.
>
> Should they be inclined to entertain the proposal I am ordered to make, the Bavarian Gov^{t} would be quite ready to accept of the same terms and even of the very words agreed to by the United States in the Convention which has been for some time under negociation and is now about to be signed at Washington with Prussia for herself and the members of the *Zollverein;* a Convention of which the Bavarian Gov^{t} approves in every material point, but which it objects becoming a party to, by reasons of form, relating to the mode stipulated in Article VI. for the exchange of ratifications
>
> We have no diplomatic agent in your Country. Therefore London ought to be made the seat of the negotiation, for beginning which and bringing it to a good issue, you would find me provided with the necessary full powers as soon as possible after I shall have heard from you the result of the initiatory step it has been my duty now to take.

The covering despatch of Lawrence, dated June 3, 1852, includes these paragraphs (*ibid.*):

> The means of intercourse between the United States and Europe have increased to such an extent, and are now so easy and frequent, that it has become, in my opinion, a duty of Gov^{ts} to provide for life & property the greatest security in their power against the ultimate escape of criminals: it would seem wise, therefore,

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to embrace every opportunity to make these international arrangements for the mutual surrender of fugitives. England and France are about to conclude a Convention with this object in view; and I am informed that there is a pretty general movement among all the European Governments to the same end.

If there should be no objection on the part of the President, I should be happy to execute your instructions on the subject of the Baron de Cettos letter with as little delay as may suit your Convenience. Indeed, a Convention may be signed here, and ratified by the Senate during its *presènt* Session.

I may add that there are now three men in Europe who have fled from the United States with large sums of money, and who cannot be secured if found, as their crime is that of breach of trust or embezzlement.

The delayed consideration by the Senate of the 1852 convention caused delay of more than a year in making a definite response to Von Cetto; the successor of Lawrence as Minister at London, Joseph R. Ingersoll, wrote as follows on June 24, 1853 (D.S., 64 Despatches, Great Britain, No. 44):

At the request of Baron de Cetto, the Bavarian Minister, I some time since made enquiry respecting a treaty of extradition which had been in the course of negotiation between his Government and that of the United States. Mr Everett informed me in reply that it being proposed by the Baron de Cetto to conclude a Convention in the words of the similar Convention which had been negotiated by the United States with Prussia [1] on her own behalf and that of the states of the Zollverein, and as that Convention had not received, and some doubts were entertained whether it would receive the assent of the Senate, it seemed hardly worth while to conclude the proposed Convention with Bavaria till that question should be decided.

Observing by a paragraph in the papers that the Treaty with Prussia had been arranged, I beg leave to renew the enquiry respecting that with Bavaria. Baron de Cetto has again called my attention to the subject with evident solicitude, and as the obstacle appears to have been removed from the Prussian negotiation, I presume there will be found none in the way of the other. Emigrants from Bavaria to the United States, although not so numerous as from some other countries, are, I believe, not rare; and it seems reasonable that the same right to reclaim offenders against the laws as exists elsewhere should be extended to this friendly nation. I have promised Baron de Cetto to make the enquiry whether any difficulty now stood in the way of the arrangement contemplated, and to communicate to him such information as I might receive in reply.

To James Buchanan, the successor of Ingersoll as Minister at London, this instruction was sent by Secretary of State Marcy on July 6, 1853, with a full power of the same date (D.S., 16 Instructions, Great Britain, 244–45; 3 Credences, 494):

So long ago as the month of June, 1852, Baron de Cetto, the Bavarian Minister at London, expressed to Mr. Lawrence a wish on behalf of his Government to conclude a Convention with the Government of the United States for the mutual extradition of fugitives from justice, similar to that which has recently been concluded between this Government and Prussia on her own behalf and that of the Zollverein. As there were doubts, however, whether the Convention with Prussia would be approved by the Senate, It was not deemed advisable to authorize Mr. Lawrence to negotiate with Baron de Cetto until that question should be settled, and an intimation was given to him accordingly. The Senate having since approved, and the President having ratified, the Convention with Prussia, no good reason is perceived why the wishes of His Majesty the King of Bavaria, touching an extradition treaty with the United States, should not be complied with. You will consequently herewith receive a full power for that purpose. Copies of the Convention with Prussia are also herewith communicated.

[1] Document 152, proclaimed June 1, 1853.

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During his tenure of office as Secretary of State (1845–49), Buchanan had strenuously opposed such a clause as Article 3 of this convention (see the notes to Document 152, under the heading "The Convention of 1845"); to this he referred in his despatch of September 2, 1853, which reads in part (D.S., 65 Despatches, Great Britain, No. 5):

I have also, since my arrival in London received your No. 3 (of the 6th July) authorising and instructing me to conclude a Convention on the part of the United-States, with the kingdom of Bavaria, for the mutual Extradition of Fugitives from justice, similar to that recently concluded with Prussia, together with a full power for this purpose. The Baron de Cetto & myself have agreed to meet on Monday next [September 5] to enter upon this business; and as he is very anxious to conclude the Convention, I do not anticipate any delay or difficulty in accomplishing the object.

I would merely observe that during Mr. Polk's administration, the third Article of the present Convention with Prussia, declaring that "none of the contracting parties shall be bound to deliver up its own citizens or subjects", was considered so wanting in real reciprocity, though reciprocal on its face, that for this, as well as for other reasons which I do not now distinctly recollect, we declined to enter into such a Convention with that Power.

As, however, this concession has already been made to Prussia and other States of the Germanic Confederation, it could not well be denied to Bavaria.

With only "verbal variations" from the 1852 convention in the preamble and Article 1, this convention with Bavaria was signed at the American Legation in London on September 12, 1853; Buchanan's report of September 16, transmitting the convention, includes these paragraphs (*ibid.*, No. 7):

Upon examination you will find that this Convention has been drawn in strict conformity with your instructions of the 6th July, and is, in every essential particular, a transcript of our recent Convention on the same subject with Prussia. The verbal variations in the preamble and at the commencement of the first Article were assented to by me in consequence of the strong desire expressed by the Baron, proceeding evidently from national jealousy, that our Convention with Bavaria should not be an exact Copy of that with Prussia.

I proposed to him to omit the Second Article, providing "that the stipulations of this Convention shall be applied to any other state of the Germanic Confederation which may hereafter declare its accession thereto" and asked him whether there were any and what German States who might probably desire to avail themselves of this concession. He answered that Wurtemberg and Hanover and other States might possibly wish to declare their accession to our Convention with Bavaria.[1] I informed him that I had no doubt the Government of the United States would be willing to conclude a similar Convention with either Wurtemberg or Hanover; and that these States could, in my opinion derive but little benefit from their accession to this Convention because the act of accession whatever this might be must first be ratified by the President and Senate, in order to render it effectual.[2] I, also, observed that an unhappy misunderstanding now existed between the United States and Austria which might possibly present difficulties to the ratification of a Convention by the President and Senate, which would enable that Power to advance a claim to be placed on the same footing with Bavaria. He replied

[1] Württemberg acceded to the convention with Prussia and other German states (Document 152); with Hanover a separate convention was made (Document 172); there was no accession to this convention with Bavaria.

[2] This is erroneous; the accessions to the 1852 convention were not submitted to the Senate (see the notes to Document 152).

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that I need have no fears on that account. Austria considered herself too great and was too proud to declare her accession to a Convention concluded by any Power but herself. He said he had himself suggested to his Government that the second article might be omitted as unnecessary; but they had objected to it, believing that the United States ought to place Bavaria in this respect on the same footing with Prussia. He added that Austria might at present, if she were so disposed, accede to our Convention with Prussia; and that therefore no possible inconvenience could result from placing Bavaria on the same footing with that Power.

I informed him that Mr Polk's administration had serious objections to the conclusion of a Treaty of Extradition with Prussia and the other German States, chiefly because these States insisted upon refusing to deliver up their own subjects who might commit crimes in the United States and escape to their respective Countries. He said that the Constitution and laws of Bavaria and all the German States, prohibited their Governments from surrendering their own subjects to be tried before a foreign jurisdiction, and besides, that the Convention would be strictly reciprocal as it did not require the United States to deliver up their citizens. I observed that this reciprocity was more nominal than real;—whilst the emigration of Bavarian subjects to the United States was very great; but few American citizens visited Bavaria. I said, however, that the Government of the United States had overcome this objection in regard to Prussia; and they were willing now to place Bavaria on the same footing.

The Baron is a frank and kind-hearted German and has been long the Minister at this Court. He seems to be very favorably disposed to our Country, and was evidently much gratified that he had signed as Plenipotentiary the first Treaty between Bavaria and the United States. He has obtained a leave of absence for two months and left London for Munich on Tuesday last [September 13], carrying with him the Convention.

I can conceive that serious difficulties may arise from extradition Conventions, especially when concluded with nations from which there is a large emigration to the United States, by a departure from the rule of surrendering fugitives from justice, no matter to what country they belong, to be tried under the jurisdiction where the crime was committed.

The convention, without accompanying papers, was sent to the Senate at an early date in the "long" session of the Thirty-third Congress (message of December 12, 1853); but there was some delay, and the resolution of advice and consent, unanimously voted, did not pass until July 12, 1854; by that date the period fixed for exchange of ratifications (nine months) had run out; so a Senate amendment changed "nine months" in Article 6 to "fifteen months" (see Executive Journal, IX, 180, 181, 353), thus extending the time to December 12, 1854.

Ratification by each Government followed in due course; the ratifications were exchanged at London on November 1 (the full power of July 26, 1854, sent to Buchanan for that purpose, is recorded in D.S., 4 Credences, 73); and the convention was proclaimed November 18, 1854.

Duration of the Convention

As to the duration of this convention with Bavaria, see the editorial notes to the convention with Prussia and other German states of June 16, 1852 (Document 152), under the heading "Territorial Extent and Duration of the Convention".

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Treaty Series No. 208
10 Statutes at Large, 1031–37
18 *ibid.*, pt. 2, Public Treaties, 503–6

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MEXICO : DECEMBER 30, 1853

The Gadsden Treaty, signed at Mexico City December 30, 1853. Original in English and Spanish.
Submitted to the Senate February 10, 1854. Resolution of advice and consent, with amendments, April 25, 1854. Ratified by the United States June 29, 1854. Ratified by Mexico May 31, 1854. Ratifications exchanged at Washington June 30, 1854. Proclaimed June 30, 1854.

In the Name of Almighty God

The Republic of Mexico and the United States of America desiring to remove every cause of disagreement, which might interfere in any manner with the better friendship and intercourse between the two Countries; and especially, in respect to the true limits which should be established, when notwithstanding what was covenanted in the Treaty [1] of Guadalupe Hidalgo in the Year 1848, opposite interpretations have been urged, which might give occasion to questions of serious moment: to avoid these, and to strengthen and more firmly maintain the peace, which happily prevails between the two Republics, the President of the United States has for this purpose, appointed James Gadsden Envoy Extraordinary and Minister Plenipotentiary of the same near the

En el nombre de Dios Todopoderoso.

La República de México y los Estados Unidos de América, deseando remover toda causa de desacuerdo que pudiera influir en algun modo en contra de la mejor amistad y correspondencia entre ambos Paises, y especialmente por lo respectivo á los verdaderos límites que deben fijarse, cuando no obstante lo pactado en el Tratado [1] de Guadalupe Hidalgo en el año 1848, aún se hán suscitado algunas interpretaciones encontradas que pudieran ser ocasion de cuestiones de grave trascendencia; para evitarlas, y afirmar y corroborar mas la paz que felizmente reyna entre ambas Repúblicas, el Presidente de México há nombrado á este fin con el carácter de Plenipotenciario *ad hoc* al Exmo. Sr. D. Manuel Diez de Bonilla, Caballero Gran Cruz de la Nacional y Distinguida Orden

[1] Document 129.

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Mexican Government, and the President of Mexico has appointed as Plenipotentiary "ad hoc" His Excellency Don Manuel Diez de Bonilla Cavalier Grand Cross of the National and Distinguished Order of Guadalupe, and Secretary of State and of the Office of Foreign Relations, and Don Jose Salazar Ylarregui and General Mariano Monterde as Scientific Commissioners invested with Full powers for this Negotiation who having communicated their respective Full Powers, and finding them in due and proper form, have agreed upon the Articles following

ARTICLE 1st

The Mexican Republic agrees to designate the following as her true limits with the United States for the future, Retaining the same dividing line between the two California's, as already defined and established according to the 5th Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande as provided in the fifth article of the treaty of Guadalupe Hidalgo, thence as defined in the said article, up the middle of that river to the point where the parallel of 31°47′ north latitude crosses the same, thence due west one hundred miles,

de Guadalupe, y Secretario de Estado y del Despacho de Relaciones Exteriores, y á los Señores D. José Salazar Ilarregui y General D. Mariano Monterde, como Comisarios Peritos investidos con Plenos Poderes para esta negociacion; y el Presidente de los Estados Unidos, á S.E. el Sr. Santiago Gadsden, Enviado Extraordinario y Ministro Plenipotenciario de los mismos Estados Unidos cerca del Gobierno Mexicano; quienes habiendose comunicado sus respectivos Plenos Poderes, y halládolos en buena y debida forma, hán convenido en los artículos siguientes:

ARTÍCULO 1º

La República Mexicana conviene en señalar para lo succesivo como verdaderos límites con los Estados Unidos, los siguientes: Subsistiendo la misma línea divisoria entre las dos Californias, tal cual está ya definida y marcada conforme al artículo quinto del Tratado de Guadalupe Hidalgo, los límites entre las dos Repúblicas serán los que siguen. Comenzando en el Golfo de Mejico á tres leguas de distancia de la costa, frente á la desembocadura del Rio grande, como se estipuló en el articulo quinto del Tratado de Guadalupe Hidalgo: de alli, segun se fija en dicho articulo, hasta la mitad de aquel Rio al punto donde la paralela de 31°47′ de latitud Norte atraviesa el mismo

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thence south to the parallel of 31°20′ north latitude, thence along the said parallel of 31°20′ to the 111th meridian of longitude west of Greenwich, thence in a straight line to a point on the Colorado river twenty english miles below the junction of the Gila and Colorado rivers, thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

For the performance of this portion of the Treaty each of the two Governments shall nominate one Commissioner to the end that, by common consent, the two thus nominated having met in the City of Paso del Norte, three months after the exchange of the ratifications of this Treaty may proceed to survey and mark out upon the land the dividing line stipulated by this article, where it shall not have already been surveyed and established by the Mixed Commission according to the Treaty of Guadalupe keeping a Journal and making proper plans of their operations. For this purpose if they should Judge it it necessary. The contracting Parties shall be at liberty each to unite to its respective Commissioner Scientific or other assistants, such as Astronomers and Surveyors whose concurrence shall not be considered necessary for the settlement and ratification of a true

Rio: de alli, cien millas en linea recta al Oeste: de alli al Sur á la paralela de 31°20′ de latitud norte: de alli siguiendo dicha paralela de 31°20′, hasta el 111 del meridiano de longitud oeste de Greenwich: de alli, en linea recta á un punto en el Rio Colorado, veinte millas inglesas abajo de la union de los Rios Gila y Colorado, de alli, por la mitad del dicho Rio colorado, Rio arriba, hasta donde encuentra la actual linea divisoria entre los Estados Unidos y Mejico.—Para la egecucion de esta parte del Tratado, cada uno de los dos Gobiernos nombrará un Comisario, á fin de que por comun acuerdo, los dos así nombrados, que se reunirán en la Ciudad del Paso del Norte, tres meses despues del cange de las ratificaciones de este Tratado, procedan á recorrer y demarcar sobre el terreno la linea divisoria estipulada por este artículo, en lo que no estuviere ya reconocida y establecida por la Comision Mixta segun el Tratado de Guadalupe; llevando al efecto Diarios de sus procedimientos, y levantando los planos convenientes. A este efecto, si lo juzgaren necesario las Partes contratantes, podrán añadir á su respectivo Comisario, alguno ó algunos auxiliares, bien facultativos ó no, como Agrimensores, Astrónomos. &°; pero sin que por esto su concurrencia se considere necesaria para la fijacion y ratificacion como verdadera línea divisoria entre ambas

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line of division between the two Republics; that line shall be alone established upon which the Commissioners may fix, their consent in this particular being considered decisive and an integral part of this Treaty, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the Parties contracting

The dividing line thus established shall in all time be faithfully respected by the two Governments without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the Law of Nations, and in accordance with the Constitution of each country respectively

In consequence, the stipulation in the 5th Article of the Treaty of Guadalupe upon the Boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same

República; pues dicha línea solo será establecida por lo que convengan los Comisarios, reputandose su conformidad en este punto, como decisiva, y parte integrante de este Tratado, sin necesidad de ulterior ratificacion ó aprobacion, y sin lugar á interpretacion de ningun género por cualquiera de las dos Partes contratantes.

La línea divisoria establecida de este modo, será en todo tiempo fielmente respetada por los dos Gobiernos, sin permitirse ninguna variacion en ella, sino es de espreso y libre consentimiento de los dos, otorgado de conformidad con los principios del Derecho de gentes, y con arreglo á la Constitucion de cada Pais respectivamente.—En consecuencia, lo estipulado en el artículo quinto del Tratado de Guadalupe sobre la línea divisoria en él descrita, queda sin valor en lo que repugne con la establecida aquí; dandose por lo mismo por derogada y anulada dicha línea en la parte en que no es conforme con la presente, así como permanecerá en todo su vigor en la parte en que tuviere dicha conformidad con ella.

ARTICLE II.

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of

ARTÍCULO II

El Gobierno de Mexico por este articulo exime al de los Estados Unidos de las obligaciones del articulo once del Tratado de Guadalupe Hidalgo, y dicho articulo y

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Guadalupe Hidalgo, and the said article and the thirty third article of the treaty [1] of amity, commerce and navigation between the United States of America and the United Mexican States concluded at Mexico, on the fifth day of April, 1831, are hereby abrogated.

ARTICLE III.

In consideration of the foregoing stipulations, the government of the United States agrees to pay to the government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.

ARTICLE 4

The Provisions of the 6th and 7th Articles of the Treaty of Guadalupe Hidalgo having been rendered nugatory for the most part by the Cession of Territory granted in the First Article of this Treaty, the said Articles are hereby abrogated and annulled and the provisions as herein expressed substituted therefor— The Vessels and Citizens of the United States shall in all Time have free and uninterrupted passage through the Gulf of California to and from their possessions

el treinta y tres, del Tratado [1] de Amistad, comercio y Navegacion entre los Estados Unidos Mexicanos y los Estados Unidos de America, concluido en Mexico el dia cinco de Abril de mil ochocientos treinta y uno quedan por este derogados.

ARTÍCULO III

En consideracion á las anteriores estipulaciones, el Gobierno de los Estados Unidos, conviene en pagar al Gobierno de Mexico en la ciudad de Nueva York, la suma de diez millones de pesos, de los cuales, siete millones se pagarán luego que se verifique el cange de las ratificaciones de este Tratado, y los tres millones restantes tan pronto como se reconosca, marque y fije la linea divisoria.

ARTÍCULO IV.

Habiendose hecho en su mayor parte nugatorias las estipulaciones de los artículos sexto y séptimo del Tratado de Guadalupe Hidalgo por la cesion de territorio hecha en el artículo 1º de este Tratado, aquellos dichos artículos quedan por este derogados y anulados, y las estipulaciones que á continuacion se espresan, substituidas en lugar de aquellas.—Los buques y Ciudadanos de los Estados Unidos tendrán en todo tiempo libre y no interrumpido tránsito por el Golfo de California para sus posesiones,

[1] Document 70.

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situated North of the Boundary line of the Two Countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government, and precisely the same provisions, stipulations and restrictions in all respects are hereby agreed upon and adopted and shall be scrupulously observed and enforced by the Two Contracting Governments in reference to the Rio Colorado, so far and for such distance as the middle of that River is made their common Boundary Line, by the First Article of this Treaty

The several Provisions, Stipulations and restrictions contained in the 7th Article of the Treaty of Guadalupe Hidalgo, shall remain in force only so far as regards the Rio Bravo del Norte below the initial of the said Boundary provided in the First Article of this Treaty That is to say below the intersection of the 31°47′30″ parallel of Latitude with the Boundary Line established by the late Treaty dividing said river from its mouth upwards according to the 5th Article of the Treaty of Guadalupe

ARTICLE 5

All the provisions of the Eighth and Ninth Sixteenth and Seventeenth Articles of the Treaty of

y desde sus posesiones sitas al Norte de la linea divisoria de los dos Paises; entendiendose que ese tránsito se há de hacer navegando por el Golfo de California y por el Rio Colorado, y no por tierra, sin espreso consentimiento del Gobierno Mexicano.—Y precisamente, y bajo todos respectos, las mismas disposiciones, estipulaciones y restricciones quedan convenidas y adoptadas por este artículo, y serán escrupulosamente observadas y hechas efectivas por los dos Gobiernos contratantes, con referencia al Rio Colorado por tal distancia, y en tanto pue a mediania de ese Rio queda como su línea divisoria comun por el artículo 1º de este Tratado.—Las diversas disposiciones, estipulaciones y restricciones contenidas en el artículo séptimo del Tratado de Guadalupe Hidalgo, solo permanecerán en vigor en lo relativo al Rio Bravo del Norte abajo del punto inicial de dicho límite estipulado en el artículo 1º de este Tratado; es decir, abajo de la interseccion del paralelo de 31°47′30″ de latitud con la línea divisoria establecida por el reciente Tratado que divide dicho rio desde su embocadura arriba de conformidad con el artículo quinto del Tratado de Guadalupe.

ARTÍCULO V.

Todas las estipulaciones de los artículos octavo, noveno, décimosexto y décimo-sétimo del Tratado

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Guadalupe Hidalgo shall apply to the Territory ceded by the Mexican Republic in the First Article of the present Treaty and to all the rights of persons and property both civil and ecclesiastical within the same, as fully and as effectually as if the said Articles were herein again recited and set forth

de Guadalupe Hidalgo, se aplicarán al territorio cedido por la República Mexicana en el artículo 1º del presente Tratado, y á todos los derechos de persona y bienes, tanto civiles como eclesiásticos, que se encuentren dentro de dicho territorio, tan plena y tan eficazmente como si dichos artículos de nuevo se insertáran é incluyéran á la letra en este.

ARTICLE 6

No Grants of Land within the Territory ceded by the First Article of This Treaty bearing date subsequent to the day Twenty fifth of September—when the Minister and Subscriber to this Treaty on the part of the United States proposed to the Government of Mexico to terminate the question of Boundary, will be considered valid or be recognized by the United States, or will any Grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the Archives of Mexico

ARTÍCULO VI.

No se considerarán válidas ni se reconocerán por los Estados Unidos ningunas concesiones de tierras en el territorio cedido por el artículo 1º de este Tratado, de fecha subsecuente al dia veinte y cinco de Septiembre en que el Ministro y Signatario de este Tratado por parte de los Estados Unidos propuso al Gobierno de México dirimir la cuestion de límites; ni tampoco se respetarán ni considerarán como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido inscritas y debidamente registradas en los archivos de México.

ARTICLE 7

Should there at any future period (which God forbid) occur any disagreement between the two Nations which might lead to a rupture of their relations and reciprocal peace, they bind themselves in like manner to procure by every possible method the adjustment of every difference, and should they still in this manner

ARTÍCULO VII

Si en lo futuro, (que Dios no permita,) se suscitare algun desacuerdo entre las dos Naciones, que pudiera llevarlas á un rompimiento en sus relaciones y paz recíproca, se comprometen así mismo á procurar por todos los medios posibles el allanamiento de cualquiera diferencia; y si aún de esta manera no se consiguiere,

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not succeed, never will they proceed to a declaration of War, without having previously paid attention to what has been set forth in Article 21 of the Treaty of Guadalupe for similar cases; which Article as well as the 22^{d} is here re-affirmed

ARTICLE 8.

The Mexican government having on the 5th of February 1853 authorized the early construction of a plank and railroad across the Isthmus of Tehuantepec, and to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States by its Agents shall have the right to transport across the Isthmus, in closed bags, the mails of the United States not intended for distribution along the

jamás se llegará á una declaracion de guerra sin haber observado préviamente cuanto en el artículo veintiuno del Tratado de Guadalupe quedó establecido para semejantes casos, y cuyo artículo se dá por reafirmado en este Tratado, así como el veintidos.

ARTÍCULO VIII.

Habiendo autorizado el Gobierno Mexicano en cinco de Febrero de mil ochocientos, cincuenta y tres, la pronta construccion de un camino de madera y de un ferro-carril en el Ystmo de Tehuantepec, para asegurar de una manera estable los beneficios de dicha via de comunicacion á las personas y mercancias de los Ciudadanos de Mexico y de los Estados Unidos, se estipula que ninguno de los dos Gobiernos pondrá obstaculo alguno al transito de personas y mercancias de ambas Naciones, y que en ningun tiempo se impondrán cargas por el transito de personas y propiedades de Ciudadanos de los Estados Unidos, mayores que las que se impongan á las personas y propiedades de otras Naciones extrangeras, ni ningun interes en dicha via de comunicacion ó en sus productos, se transferirá á un Gobierno extrangero.

Los Estados Unidos tendrán derecho de transportar por el Ystmo por medio de sus agentes y en valijas cerradas las malas de los Estados Unidos que no han de

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line of communication; also the effects of the United States government and its citizens, which may be intended for transit, and not for distribution on the Isthmus, free of custom-house or other charges by the Mexican government. Neither passports nor letters of security will be required of persons crossing the Isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican government having agreed to protect with its whole power the prosecution, preservation and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

ARTICLE 9

This Treaty shall be ratified, and the respective ratifications

distribuirse en la extension de la linea de comunicacion y tambien los efectos del Gobierno de los Estados Unidos, y sus Ciudadanos que solo vayan de transito y no para distribuirse en el Ystmo estarán libres de los derechos de aduana ú otros, impuestos por el Gobierno mexicano. No se exigirá á las personas que atraviesen el Ystmo, y no permanescan en el pais, pasaportes ni cartas de seguridad.

Cuando se concluya la construccion del ferro-carril, el Gobierno Mexicano conviene en abrir un puerto de entrada, ademas del de Veracruz en donde termina dicho ferro-carril en el Golfo de Mexico ó cerca de ese punto

Los dos Gobiernos celebrarán un arreglo para el pronto transito de tropas y municiones de los Estados Unidos, que este Gobierno tenga ocasion de enviar de una parte de su territorio á otra, situadas en lados ópuestos del continente.

Habiendo convenido el Gobierno Mexicano en proteger con todo su poder la construccion, conservacion y seguridad de la obra los Estados Unidos de su parte podrán impartirle su proteccion siempre que fuere apoyado y arreglado al derecho de gentes.

ARTÍCULO IX.

Este Tratado será ratificado, y las ratificaciones cangeadas en la

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shall be exchanged at the City of Washington, within the exact period of six months from the date of its signature or sooner if possible

Ciudad de Washington, en el preciso término de seis meses ó ántes si fuere posible, contado ese término desde su fecha.

In testimony whereof, We the Plenipotentiaries of the contracting parties have hereunto affixed our hands and seals at Mexico the—Thirtieth (30th)—day of December in the Year of Our Lord one thousand eight hundred and fifty three, in the thirty third year of the Independence of the Mexican Republic, and the seventy eighth of that of the United States

En fé de lo cual, Nosotros los Plenipotenciarios de las Partes Contratantes lo hemos firmado y sellado en México, el dia treinta de Diciembre del año de Nuestro Señor mil ochocientes cincuenta y tres, trigésimo tercero de la Independencia de la República Mexicana, y septuagésimo octavo de la de los Estados Unidos.

James Gadsen	[Seal]	[Seal]	Manuel Diez de Bonilla
Manuel Diez de Bonilla	[Seal]	[Seal]	J. Mariano Monterde
José Salazar Ylarregui	[Seal]	[Seal]	José Salazar Ylarregui
J. Mariano Monterde	[Seal]	[Seal]	James Gadsden

NOTES

Although the most important clauses of this treaty were not contained in the instrument signed at Mexico City but were framed in the Senate of the United States, it has long been known as the Gadsden Treaty, from the name of the Plenipotentiary of the United States, James Gadsden.

It will be seen from the treaty text that the principle of the *alternat* was not fully observed; in the opening phrase of the preamble and in the final words of the testimonium clause the United States is named second in both versions.

In the text of the treaty following the headnote, the wording of the preamble, Articles 4, 5, 6, 7, and 9, and the testimonium clause, is from the signed original, subject only to these three slight changes, owing to Senate amendments: at the end of Article 7 "reaffixed" is changed to "re-affirmed" and, in the Spanish, "reproducido" to "reafirmado"; in Article 9 "four" becomes "six" and "cuatro" becomes "seis"; and in the final clause "Seventy Seventh" is corrected to "seventy eighth" and "séptimo" to "octavo". The opening of Article 1, to and including "the limits between the Two Republics shall" ("los límites entre las dos Repúblicas"), and all that part of the article from "For the performance" ("Para la egecucion") to its close, are from the signed original; the intermediate portion of

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Article 1, the boundary description, is, for the English, from the duplicate United States instrument of ratification (wherein is recited almost literally the attested Senate resolution of advice and consent), and, for the Spanish, from the Mexican instrument of ratification. The English of Articles 2, 3, and 8 is from the duplicate United States instrument of ratification; the Spanish of those three articles is from the Mexican instrument of ratification. The varied styles of the article numbers from 2 to 9 of the English and Spanish versions are those used respectively in the Senate resolution and in the Mexican instrument of ratification.

Two works of particular value in the study of the Gadsden Treaty are frequently cited in these editorial notes: Garber, The Gadsden Treaty (cited as "Garber") and Rippy, The United States and Mexico (cited as "Rippy").

The File Papers

Four of the papers in the treaty file were bound together (the binding ribbons are now broken); in order of date these are (1) the signed original of the treaty, in English and Spanish, with the English version written on the left pages;[1] (2) the attested resolution of the Senate of April 25, 1854 (see Executive Journal, IX, 312–15); (3) the duplicate United States instrument of ratification of June 29, 1854, wherein the treaty is referred to as "hereunto annexed" and the extensive Senate amendments are recited word for word as in the attested Senate resolution; and (4) the original proclamation of June 30, 1854, drafted in the customary form of publication, so as to read as if it included a running text of the treaty "as amended by the Senate of the United States, and being in the English and Spanish languages" (see 10 Statutes at Large, 1031–37).

The Mexican instrument of ratification includes a running text of the amended treaty in Spanish and English, the former version being in the left columns. That instrument reads in translation as follows:

Antonio López de Santa Anna

Well-deserving of the country, General of Division, Grand Master of the National and Distinguished Order of Guadalupe, Knight Grand Cross of the Royal and Distinguished Spanish Order of Charles III, and President of the Mexican Republic, to all to whom these presents shall come, know ye:

That, a treaty between the Mexican Republic and the United States of America having been concluded and signed in this capital on the 30th day of December of last year, 1853, by Plenipotentiaries of the two Governments duly and respectively authorized to that end, which treaty, with the modifications subsequently agreed to therein by both parties, is of the following form and tenor:

[Here follows the treaty text as amended, in Spanish and English]

Now, therefore, having seen and examined the said treaty, in the exercise of the powers which the nation has been pleased to confer upon me, I accept, ratify, and confirm it and promise in the name of the Mexican Republic to fulfil and observe it and to cause it to be fulfilled and observed.

[1] The Senate amendments are roughly indicated throughout the English version in red pencil; brackets show omissions, short insertions or substitutions are written in, and brief phrases represent the longer insertions.

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Given at the National Palace of Mexico, signed with my hand, authenticated with the great seal of the nation, and countersigned by the Secretary of State and of the Office of Foreign Relations on the thirty-first day of the month of May of the year of Our Lord one thousand eight hundred and fifty-four, the thirty-fourth of the independence of the Republic.

A. L. DE Sta ANNA

MANUEL DIEZ DE BONILLA

[Seal appendant]

The certificate of the exchange of ratifications in the file is in Spanish, of this tenor (translation):

Mexican Legation
in the
United States of America

We, the undersigned, Juan N. Almonte, General of Division, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic near the Government of the United States of America, and William L. Marcy, Secretary of State of the United States, certify:

That, having met this day in order to exchange the ratifications of the treaty concluded between our respective Governments on the thirtieth of December last, with the modifications subsequently agreed to, the said exchange was made by us, after duly comparing the ratifications, the one with the other and both with the original of the said treaty and its amendments.

In faith whereof we have signed these presents and affixed thereto our respective seals at Washington the thirtieth of June of the year of the Lord one thousand eight hundred and fifty-four.

J. N. ALMONTE [Seal]
W. L. MARCY. [Seal]

It is not to be doubted that the example of the certificate of exchange which was delivered to the Mexican Minister was written in English and that the Secretary of State was named first therein; the procedure, not usual or correct, may have been either inadvertent or deliberate. On June 29, 1854 (one day before the exchange), this note was written by Marcy (D.S., 6 Notes to the Mexican Legation, 391; "the Mexican copy of the ratified Treaty" might mean either the Mexican instrument of ratification or the delivered ratification of the United States): [1]

The Secretary of State presents his compliments to General Almonte, and has the honor to submit herewith, a draft of the form of certificate which it is proposed to sign and exchange with the exchange of ratifications of the Treaty of the 30th December, last.

The Secretary of State suggests that a copy of this certificate be prepared in the Spanish language in order that it may accompany the Mexican copy of the ratified Treaty.

Also in the file is an unsigned paper of Department of State origin (dating not earlier than 1855) which, by comparison and translation, purports to show discrepance between the English and Spanish versions of the opening words of Article 2 of the treaty.

[1] The same form of note is found elsewhere, as in the case of the convention with Peru of July 4, 1857 (see D.S., 1 Notes to the Peruvian Legation, 189, October 12, 1858). The certificate of exchange in the file of that convention is in English.

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The Full Powers

The Plenipotentiary of the United States, James Gadsden, Minister to Mexico, had been duly instructed to negotiate and sign a treaty but had no full power; a treaty with Mexico was in contemplation from the outset of Gadsden's mission, although by his instructions of July 15, 1853, written before he departed for Mexico City, he was not authorized to sign one; the definitive instructions of October 22, 1853, were not sent in writing, but by a messenger charged to deliver them verbally (the instructions of both dates are printed below under the heading "The Negotiations"); whether it was then decided by Secretary of State Marcy that no full power was to be issued and entrusted to that messenger or whether the matter was overlooked, cannot now be known.

In lieu of a full power, a note written by Gadsden, stating his authority, was delivered and accepted (see the protocol of the conference of December 10, 1853, and Gadsden's despatch No. 16, of December 16, 1853, both printed below, the latter in part only, under the heading "The Negotiations").

The full powers of the Mexican Plenipotentiaries are mentioned in each of the two papers just cited; and there is the usual recital of communication of powers in the preamble of the treaty; but the wording of the Mexican full powers is not available. It appears that those full powers were issued by November 30, 1853 (see the note of Bonilla to Gadsden of that date, printed in translation below under the heading "The Negotiations").

For the exchange of ratifications at Washington on June 30, 1854, there were full powers on each part (see D.S., 6 Notes to the Mexican Legation, 391–92, June 30 and July 1, 1854); the power issued to Secretary of State Marcy, a certified copy of which was sent to the Mexican Minister, General Almonte, on the day of the exchange (*ibid.*), was in this form (D.S., 4 Credences, 57):

Franklin Pierce, President of the United States of America,

To all to whom these presents shall come, Greeting:

Know Ye, that I hereby authorize William L. Marcy, Secretary of State of the United States, to effect, with any person duly authorized by the Mexican government for that purpose, the exchange of my ratification for that of the President of the Mexican Republic, of the Treaty between the United States and that Republic, signed at Mexico, on the thirtieth day of December last, as amended by the Senate of the United States.

In witness whereof, I have caused the Seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington, the twenty ninth (LS) day of June, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventy-eighth year of the Independence of the United States.

Franklin Pierce.

By the President:
W. L. Marcy,
Secretary of State.

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In a note of July 1, 1854, Almonte wrote that, pursuant to Marcy's request, he therewith transmitted a certified copy of his full power (D.S., 7 Notes from the Mexican Legation). A red-ink footnote to that note is to the effect that the enclosure is filed with the treaty; but there is no full power in the treaty file. With the note there are two copies of the full power, one of which is certified by Almonte. The date of the power is January 3, 1854, only four days after signature of the treaty. The certified copy reads thus in translation:

Mexican Legation
in the
United States of America

Antonio López de Santa Anna, well-deserving of the country, General of Division, Grand Master of the National and Distinguished Order of Guadalupe, Knight Grand Cross of the Royal and Distinguished Spanish Order of Charles III, President of the Mexican Republic, etc., etc., etc.

To all to whom these presents shall come, know ye:

That, having complete confidence in the enlightenment and integrity of His Excellency the General of Division Don Juan N. Almonte, Envoy Extraordinary and Minister Plenipotentiary of the Republic in the United States of America, I have decided to confer upon him, as by these presents I do confer upon him, ample and sufficient powers that, with the person or persons duly authorized by the Government of the said States, he may proceed to the exchange of the ratifications of the Treaty of Friendship, Limits, and Definitive Settlement between the two nations which was signed at this capital on the 30th day of December of last year.

In faith whereof I have caused these presents to be issued, signed with my hand, authenticated with the great seal of the nation, and countersigned by the Secretary of State and of the Office of Foreign Relations, at the National Palace of Mexico on the third day of the month of January one thousand eight hundred and fifty-four.

ANTONIO L. DE Sta ANNA

MANUEL DIEZ DE BONILLA

[Place of the seal]

Mexican Legation
in the
United States of America

Juan N. Almonte, General of Division, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic near the Government of the United States of America:

I certify that the annexed document is a true and exact copy of the full powers that have been conferred on me for the purpose of effecting the exchange of the ratifications of the treaty lately concluded between Mexico and the United States, and that originals are in the archives of this Legation.

In testimony whereof I sign these presents and have authenticated them with the seal of the Legation, in the city of Washington on the thirtieth day of June of the year of the Lord one thousand eight hundred and fifty-four and the thirty-fourth of the independence of the Mexican Republic.

[Seal] J. N. ALMONTE

BACKGROUND

The Treaty of Guadalupe Hidalgo (Document 129) entered into force on May 30, 1848; during the five years following, various questions arose to disturb the "concord, harmony and mutual confidence" of "good neighbours" which, by the preamble of that treaty,

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were intended to be assured; one of the major problems to be dealt with by the Pierce administration when it came into office (March 4, 1853) was that of relations with Mexico; almost contemporaneously (April 20, 1853) Santa Anna again became President of Mexico, ruling without a legislature and under disturbed and difficult conditions, political and financial.

The dispute over the location of the line running westwardly from the Rio Grande along the southern boundary of New Mexico, which had its origin in the wording of Article 5 of the Treaty of Guadalupe Hidalgo, was open; the demarcation of the boundary by Commissioners and Surveyors of the two countries had ceased; the area involved was about 6,000 square miles, including the Mesilla Valley; there were matters of administration and jurisdiction which locally were critical; and in the United States interest in the difference and in the frontier between the Rio Grande and the Colorado in its entirety was increased by rival projects for a transcontinental railway (see vol. 5, pp. 419–21, 368–70, and authorities there cited).

The Indian problem of the frontier was real and urgent. Article 33 of the treaty of April 5, 1831, contained reciprocal clauses on the subject (Document 70; the treaty of 1831 had been revived by Article 17 of the Treaty of Guadalupe Hidalgo, except for stipulations not consistent therewith); with the frontier as it had existed prior to the annexation of Texas and the Mexican War (1845–48) those clauses were of comparatively minor importance; but with the extension of the boundary between the two countries to the Pacific, Article 11 of the Treaty of Guadalupe Hidalgo was written; and the obligations on the part of the United States therein included were very sweeping and stringent; in performance those obligations had proved to be exceedingly onerous and difficult (see Rippy, 68–84; Garber, 26–40); and the Government of Mexico earnestly contended that they had not been fulfilled. During the Fillmore administration efforts were made to negotiate a release from the mentioned obligations; in an instruction from Secretary of State Webster to Robert P. Letcher, Minister to Mexico, dated August 19, 1851, this was written (D.S., 16 Instructions, Mexico, 279–85; printed in full in Manning, Diplomatic Correspondence of the United States, 1831–1860, IX, 89–91):

> The President deems it of the utmost importance that we should be released from the stipulations in regard to Indians contained in the 11th. Article of the Treaty of Guadalupe Hidalgo, and the 33d. of that of 1831. The stipulations in the former are not reciprocal like those upon the same subject in the 5th. Article of the Treaty[1] with Spain of 1795, and the 33d. Article of the Treaty of 1831, are unlimited in duration and impose upon this government the obligation to prevent and punish the depredations of United States Indians in Mexico, without a corresponding stipulation on the part of that government to restrain, prevent and punish depredations of Mexican Indians upon the United States.
>
> There can be no doubt that the inhabitants of the northern States of Mexico have suffered severely from Indian depredations since the Treaty of Guadalupe Hidalgo went into operation, and the Mexican government has complained of them both in representations to our Legation at Mexico and to this Department. It is understood that the suffering parties intend to ask amends from this government for the losses and injuries which they have sustained, but no claims therefor

[1] Document 18.

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have yet been formally presented. The treaty, however, does not promise reparation to individual Mexicans who may suffer from the ravages of our Indians but binds this government to restrain, prevent and punish them in the same manner as if they had been directed against our own citizens. This has hitherto been done. The hostile acts of the Indians whose homes are in the territory ceded to the United States by the Treaty of Guadalupe Hidalgo, have not been confined to Mexican citizens only, but have probably been as frequent, as destructive and as barbarous on citizens of the United States, especially of North Western Texas, New Mexico and California. In the application of its disposable force for the purpose of checking these outrages, this government has been entirely impartial and as this is all that the treaty requires, neither the Mexican Government nor the aggrieved inhabitants of that country have just cause of complaint against the government of the United States. It is obvious that along a frontier of such an extent, most of it a rugged wilderness, without roads of any kind and impassable, not only by wheeled vehicles but perhaps even by horses, no means which could have been employed since the Treaty of Guadalupe Hidalgo went into operation, would have sufficed to prevent incursions of United States Indians into Mexican territory. The subsistence, forage and ammunition of the troops must necessarily have been conveyed from one or the other extremity of the line of boundary, and without roads, this would have been impracticable. It is also notorious that that part of the boundary which extends from the Rio Grande to the Gila, and which is not a natural line, such as those rivers afford, has not yet even been marked. This would in any event have rendered it uncertain where a road for the conveyance of our military stores ought to have been constructed or where our troops should have been posted. The probability, also, that savages dwell on both sides of at least this part of the line, would render it uncertain, in the absence of land marks, whether depredations from that quarter have been committed by United States or by Mexican Indians.

But although we cannot acknowledge that we have been unfaithful to Mexico on this subject and cannot acquiesce in any construction of the treaty which would make that an absolute which must only have been intended for a relative obligation, if the Treaty should remain as it is, this government will be constantly liable to imputations of bad faith. Exaggerated and fraudulent claims for indemnification will be preferred against it, and there will be no hope of preserving harmonious relations with the government of Mexico. Under these circumstances the President wishes you to propose to that government a Convention releasing the United States from the obligations contained in the 11th. Article of the Treaty of Guadalupe Hidalgo and containing a mutual release of those embraced in the 33d. article of the Treaty of 1831.

A Full Power, authorizing you to conclude and sign such a Convention is herewith communicated to you. It may be that Mexico expected great results from the stipulations in those Articles. Indeed, Mr. de la Rosa has stated in a note to this Department, that she would never have assented to the Treaty of Guadalupe Hidalgo had it not been for the obligations assumed by this government in its 11th. Article. Still, as it is quite probable she mistakes its real meaning and does not appreciate the difficulties to be surmounted in carrying it into effect according to her understanding of it, if these considerations are properly presented to her, she may be willing to accede to our proposition. As an inducement however, for her to adopt this course, the President would be willing that the Convention should contain stipulations to pay Mexico a sum not exceeding dollars assuming the 3d. and 4th. instalments [1] due under the Convention of 1843, which were never paid, and, also assuming the payment of such claims of citizens of the United States against her as may have originated since the date of the Treaty of Guadalupe Hidalgo. These claims are not numerous, but the aggrieved parties are impatient for relief, which they cannot expect the Mexican government will

[1] The third instalment under the convention of January 30, 1843 (Document 100), was duly paid; the writer of this instruction was thinking of the fourth and fifth instalments (see vol. 4, pp. 497–98) and overlooked the fact that all liability of Mexico under the convention of 1843 and for the claims adjudicated under the convention of April 11, 1839 (Document 89), was ended by Article 13 of the Treaty of Guadalupe Hidalgo.

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of its own accord extend to them in the present state of its finances, and it is impossible to say when their condition will be more flourishing. You are aware that some of the claims are for violations of the 19th. Article of the treaty, occasioned by the refusal of the Mexican authorities to allow commodities imported prior to the surrender of the Custom Houses, to be carried into the interior and sold. . . . There are probably others which have not been presented either to the Legation at Mexico or to this Department. In order that the parties interested in such cases may not be debarred from relief by some future arrangement, it would be advisable to limit the assumption by this government and the release to Mexico, to such claims as may have been so presented. This course has been adopted on former occasions. The draft[1] of a Convention which you will herewith receive contains such stipulations as are desirable, but you may deviate from it in any manner which your own judgment and the exigencies of the negotiation may dictate and require, except that the sum authorized to be paid to Mexico is considered as a maximum. You will of course endeavor to induce her to accept a smaller sum.

The objects which Mexico sought to compass by the 11th. Article of the Treaty of Guadalupe Hidalgo, will in all probability be accomplished with as much certainty and as soon, by means of the ordinary Indian policy of the United States as if that Article were to remain in operation. That policy has generally been successful. As the territories of the nomadic tribes have been narrowed by the advancing tide of civilization, the savages have been restrained by the military force which has preceded or accompanied the settlers, or by means of treaties stipulating peace, which the Indians have found it for their interest to observe. The same course will be pursued in respect to the Indians mentioned in our treaties with Mexico. The vastness of the regions over which they roam, may be an obstacle to its comparative success there, but if the white population shall spread over them with any thing like the rapidity with which it has occupied the Indian territory in other quarters of the Union, its ultimate triumph within a reasonable time will be sure.

It seems that the sum (left blank in the record copy) which Letcher was authorized by the foregoing instruction to agree to pay to Mexico was $3,000,000; the correctness of this rests on the recollection, more than two and a half years later, of the Chief Clerk of the Department, William Hunter, Jr., who was Claims Clerk in 1851, that such was "the sum originally contemplated". Marcy wrote this on the point in his report of April 13, 1854, transmitted to the Senate with a presidential message of the same date (D.S., 7 Report Book, 79–80; see Executive Journal, IX, 298):

It appears from the record of the instructions to Mr Letcher, that, under date the 19th of August, 1851, he was directed to enter upon the negotiation of a convention with the Mexican government for the abrogation of the 11th Article of the Treaty of Guadalupe Hidalgo, but the sum which he was authorised to offer as a consideration therefor is not mentioned in the instruction. It was, however, at the date of this instruction, communicated to the present Chief Clerk of this Department, whose recollection of it is that three millions was the sum originally contemplated. This sum was, therefore, inserted in the blanks of the record when the copies called for by the Resolution of the 3rd January were transmitted to the Senate. The omission in the record was, probably, occasioned by the fact that Mr Letcher was himself the bearer of the letter to Mexico, and by the apprehension that, if it should be lost or stolen, information of the sum authorised to be offered might reach persons who had no right to receive it.

The instruction to Mr Letcher of the 27th of February, 1852, authorised him to offer an additional sum of one and even two millions in addition to that referred to in the instruction of the 19th of August, 1851.

[1] For this draft, see Manning, *op. cit.*, IX, 91–92, footnote.

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The whole amount which Mr Letcher was directed to offer is referred to, but, also, in blank, in the instruction to Mr Conkling of the 14th of October, 1852, which instruction he took with him on repairing to his post.

It is relevant to mention that during the negotiations of December 1853 the Mexican Minister of Foreign Affairs, Manuel Diez de Bonilla, said that Letcher "in 1852" had offered $5,000,000 and that Alfred Conkling, successor of Letcher as Minister to Mexico, in June 1853 had offered $8,000,000 for the abolition of Article 11 of the Treaty of Guadalupe Hidalgo (see the protocol of December 23, 1853, printed below under the heading "The Negotiations"). If the original sum was $3,000,000, Letcher had authority by the instruction of February 27, 1852 (cited below), to offer $5,000,000; but Conkling never had authority to offer $8,000,000 unless the first figure was as much as $6,000,000.

On February 27, 1852, Letcher was authorized to "offer one and even two millions in addition" to the $3,000,000 [1] of the previous instruction (Manning, *op. cit.*, IX, 111, signed by William S. Derrick, Acting Secretary). Nothing was accomplished under the instructions to Letcher; they were renewed by Acting Secretary of State Charles M. Conrad (Secretary of War and Acting Secretary of State during the last illness of Webster, who died on October 24, 1852; Conrad was Secretary of State ad interim from October 25 to November 5, 1852) to Letcher's successor, Alfred Conkling, except that "the claims of our citizens for wrongs done by Mexico" were not to be assumed by the United States but were "to be deducted from the amount" of $5,000,000 (*ibid.*, 125, October 14, 1852). Conkling was as unsuccessful as Letcher had been; the Mexican Government continued to think of sums much larger than those proposed (see Conkling's despatch No. 47, of June 20, 1853, in *ibid.*, 591–93).

Another subject which was then of much import in the relations of the two countries was that of projected means of communication across the Isthmus of Tehuantepec. The first concession for the purpose of such communication was by a contract of March 2, 1842, between the Mexican Government and José de Garay, a Mexican citizen, pursuant to a decree of Santa Anna, then President of Mexico, dated March 1, 1842. This concession was known as the Garay Grant; its terms were extravagant and improvident, including title to unoccupied lands for ten Mexican leagues,[2] and right of settlement within fifty leagues, on each side of the line of communication; eighteen months were allowed for the preliminary survey (said to have been made), and construction was to begin within ten months thereafter (for a translation of the decree and grant, see Williams, Isthmus of Tehuantepec, 263–69). Two extensions of time for commencement of the work were granted, the first, of one year, and the

[1] It is assumed here that this is the correct amount.

[2] A Mexican league is somewhat less than three English miles. The extent of the land grant was calculated to be 4,860,000 acres (see Williams, Isthmus of Tehuantepec, 140). That work was copyrighted in 1852 by the Tehuantepec Railroad Company of New Orleans (not, it seems, incorporated), of which Judah P. Benjamin was chairman.

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second, to November 5, 1848, by decree of General José Mariano de Salas of November 5, 1846 (see *ibid.*, 269–77). Pursuant to contracts of earlier date, Garay transferred his rights to Manning and Mackintosh, British subjects, on September 28, 1848 (for transfer papers, see Senate Executive Document No. 97, 32d Congress, 1st session, serial 621, pp. 163–77, hereinafter cited as "serial 621").

The ownership of the Garay Grant by Manning and Mackintosh was the reason given by the Mexican Plenipotentiaries for their refusal, during the negotiation of the Treaty of Guadalupe Hidalgo, to agree to Tehuantepec clauses in that treaty (see vol. 5, pp. 282–83); an article on Tehuantepec was among those of the American draft treaty given to Nicholas P. Trist, the negotiator for the United States (*ibid.*, 266–67); and the value put upon that article in the "maximums" of Trist's instructions was $5,000,000 (*ibid.*, 262–64).[1]

On February 5, 1849, Manning and Mackintosh transferred the Garay Grant to Peter A. Hargous, of New York, an American citizen (see the transfer papers above cited); the rumored consideration was $25,000 (Butler, Judah P. Benjamin, 124); a New Orleans group, under the leadership of Judah P. Benjamin, became associated with Hargous (see Benjamin to Webster, April 15, 1851, in serial 621, pp. 50–52; also the "card" or statement of Benjamin, "Chairman of the Tehuantepec Railroad Company", in Williams, *op. cit.*, 287–95, published in 1852); and on the surveys for a Tehuantepec railway which were carried on for this company from December 1850 to June 1851 under the direction of Major John G. Barnard, U.S.A., it is said that more than $100,000 was expended (*ibid.*, 285–87, 291).

Under this American ownership the Garay Grant was strongly supported during the Taylor and Fillmore administrations by Secretaries of State Clayton and Webster. Pursuant to directions of the former, a convention of guaranty in aid of the Garay Grant was signed at Mexico City on June 22, 1850 (D.S., Unperfected I2; for the English version, see Manning, *op. cit.*, IX, 364–66, footnote; and for relevant instructions of Clayton from April 30, 1849, to April 23, 1850, see *ibid.*, 27–28, 37–41, 48, 51). That convention was not submitted to the Senate; Hargous desired changes in its text, which Webster sought, with small success, to obtain; a substitutional convention, differing but slightly from the convention of 1850, was signed at Mexico City on January 25, 1851 (D.S., Unperfected I2; for the English version, see serial 621, pp. 47–50; comparison of the 1850 and 1851 conventions is in Manning, *op. cit.*, IX, 379–80, footnote); that convention was submitted to the Senate and on March 7, 1851, received the advice and consent of that body (Executive Journal, VIII, 317); it was ratified by the United States on March 11, 1851, and the ratification was transmitted to Mexico City on the following May 5 (see Manning,

[1] Various authorities, official and unofficial, have made the erroneous statement that Trist was authorized to pay $15,000,000 for the Tehuantepec clauses of his instructions (see Webster to Letcher, January 31, 1852, in Manning, *op. cit.*, IX, 109–10; Hunter to Burwell, March 22, 1852, in *ibid.*, 115–17); this mistake arises from reading those instructions only in part; and it was clearly pointed out by Secretary of State Cass on November 17, 1857 (*ibid.*, 246).

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op. cit., IX, 80, 116); but before the convention of 1851 was submitted to the Mexican Congress that Legislature had taken action which resulted in a decree of President Mariano Arista of May 22, 1851, declaring the Salas decree of November 5, 1846, null and void and thus invalidating the Garay Grant (for a translation of the decree, see *ibid.*, 397, footnote; and for relevant instructions and other papers of Webster, of Acting Secretary of State William S. Derrick, and of Acting Secretary of State John J. Crittenden, from August 17, 1850, to December 22, 1851, see *ibid.*, 57, 58–64, 65, 66–69, 71–88, 92–96, 98–99, 106–8; correspondence of that period between Webster and Hargous is printed in serial 621, pp. 24–44, *passim*, 67–74, 90–92, 98–100). A project substitutional for the 1851 convention was proposed by the Mexican Government on January 3, 1852 (for a translation of that project, see serial 621, pp. 120–24; the covering note is in Manning, *op. cit.*, IX, 447–52); it was not found acceptable (see *ibid.*, 485–86, April 2, 1852); and the convention of 1851 was almost unanimously rejected by the Mexican Chamber of Deputies on April 7, 1852 [1] (*ibid.*, 490; the time limited for the exchange of ratifications had been prorogued from January 25 to April 8, 1852; see *ibid.*, 462, and serial 621, pp. 114–15; for relevant instructions and other papers written in 1852 by Webster and by Acting Secretaries of State William S. Derrick and William Hunter, Jr., during Webster's tenure of office, see Manning, *op. cit.*, IX, 109–20; President Fillmore's letter to President Arista of March 19, 1852, is in serial 621, pp. 157–59).

Hargous then protested and, on June 5, 1852, for "himself and associates, the Tehuantepec company of N. Orleans", presented to the Department of State this claim of $5,283,000 against the Government of Mexico [2] (*ibid.*, 148–50):

[1] President Arista wrote to Webster on June 2, 1851, that the "actual holder of the annulled privilege . . . can scarcely have spent a hundred thousand dollars in his undertaking" (Manning, *op. cit.*, IX, 395).

[2] Letcher reported that many American citizens had written letters to the Mexican Government advising the rejection of the treaty of January 25, 1851 (December 1, 1851; Manning, *op. cit.*, IX, 434–35); he then transmitted as a specimen a copy of a letter to President Arista from Jonas P. Levy, dated at Washington November 7, 1851 (for the letter and covering despatch of December 14, 1851, received January 28, 1852, see *ibid.*, 438–41). Under the Logan Act of January 30, 1799 (1 Statutes at Large, 613; a statute very rarely invoked), Levy was indicted in Washington, arrested in New York on January 31, 1852, and bailed for $5,000 in Washington on February 3, 1852 (Charleston Courier, February 7, 1852, p. 2; February 9, 1852, p. 2); Webster sought to obtain the original of Levy's letter (Manning, *op. cit.*, IX, 109–10, January 31, 1852), which Arista refused to give up (*ibid.*, 486, April 4, 1852); accordingly the indictment was *nolled* (*ibid.*, 136, footnote).

In the issue of the Charleston Courier of February 9, 1852, p. 2, there is this account of Levy:

> LEVY has resided in Mexico at various times for years past, and during the war with Mexico had the command of the U.S. transport ship *American* and assisted Gen. SCOTT to land at Vera Cruz, indicating to him the place where he should land. He is the brother of Capt. LEVY, of the U.S. Navy. His interest in defeating the Tehuantepec treaty grows out of his possession of a grant to make a road from Alvarado Huaculco, which grant, as he states, he obtained from the Mexican Government a year or two ago. Others have used, for interested motives, their influence to defeat this treaty. Its ratification would be injurious to the prosecution of rival routes.

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Statement of the demand made against the government of the republic of Mexico by P. A. Hargous of New York, and his associates, the New Orleans company, for the loss occasioned by the confiscation of their property in the right of way across the Isthmus of Tehuantepec, and other franchises, as also certain lands granted in fee simple.

Value of lands and franchises confiscated, according to articles of sale to New Orleans company	$3, 500, 000 00
Expenses incurred by P. A. Hargous and by the company in surveying and developing the grant	280, 000 00
Loss occasioned by expulsion of engineers and agents, thereby requiring a repetition of work already provided for	100, 000 00
Loss of use of steamer United States purchased for the service of the survey, rendered useless by exclusion	35, 000 00
Duties exacted upon supplies for the engineering party shipped by the company per schooner Sears, and value of barges Almagres and Sarabia, seized by the Mexican authority in November, 1851	12, 000 00
Loss of services of said barges from November, 1851, until date, $500 per month for each	6, 000 00
Loss of use of temporary road which the New Orleans company had determined to open immediately, and made arrangements accordingly in the commencement of 1851, say twelve months as per estimate given in the printed report of the company's survey	1, 350, 000 00
	5, 283, 000 00

P. A. HARGOUS,
For himself and associates, the Tehuantepec company of N. Orleans.
WASHINGTON, *May 1, 1852.*

Mexican legislation looking toward a contract for communication across the Isthmus of Tehuantepec was enacted on May 14, 1852 (see Manning, *op. cit.*, IX, 501; a translation of the text of the act is in Senate Executive Document No. 72, 35th Congress, 1st session, serial 930, pp. 5–6; that document is hereinafter cited as "serial 930"). Papers were requested by the Senate of the United States by resolution of July 19 and were transmitted by President Fillmore on July 27 (serial 621); the Committee on Foreign Relations made a report recommending resolutions of a rather vigorous tenor (Senate Report No. 355, 32d Congress, 1st session, serial 631); but this was on August 30, 1852, the day before the session ended; the Senate took no action, then or later. In the instruction of Acting Secretary of State Conrad of October 14, 1852, it was recognized that there might be clauses in the Garay Grant "particularly obnoxious to the Mexican government or people" and "real objections to the grant" (see Manning, *op. cit.*, IX, 121–23; and for two notes of Secretary of State Everett, of December 31, 1852, and January 31, 1853, see *ibid.*, 127–28).

Before the United States and Mexican Claims Commission under the convention of July 4, 1868, Levy had two claims (which were dismissed), respectively for $116,919.41 and $5,000,000. The larger claim was for violation of his grant for constructing a road (Senate Executive Document No. 31, 44th Congress, 2d session, serial 1720, p. 18, No. 6, and p. 64, No. 967; that document is hereinafter cited as "serial 1720").

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On February 5, 1853, another Tehuantepec concession, of much more reasonable terms than the Garay Grant, was made by the Mexican Government to the "mixed company" of Albert G. Sloo [1] and associates. Sloo, a citizen of the United States, was represented in the making of the contract at Mexico City by William D. Lee.[2] A convention between the United States and Mexico in aid of the Sloo Grant [3] (to which a copy of the grant was annexed) was signed at Mexico City on March 21, 1853 (D.S., Unperfected J2; the English version of the convention and a translation of the Sloo Grant are printed in Manning, *op. cit.*, IX, 540–46, footnote; translations of the grant and decree of the same date are in serial 930, pp. 20–26); that convention was signed on behalf of the United States by Alfred Conkling, Minister to Mexico, without full powers or instructions in the premises; and while the convention was ratified by Mexico on March 29, 1853 (see D.S., 16 Despatches, Mexico, No. 29, March 29, 1853, enclosure), it was not approved by President Pierce, and it was not submitted to the Senate for action thereon; the copy communicated to that body on February 16, 1854, was for information (Executive Journal, IX, 247, 265–66; Senate Confidential Executive Document No. 17, 33d Congress, 1st session, 34 Regular Confidential Documents, 273–87).

There was thus in 1853 conflict in respect of Tehuantepec concessions between American private interests, the claimants under the Garay Grant and those interested in the Sloo Grant (see Hargous to Marcy, May 7, 1853, in serial 930, pp. 29–31).

Under the Sloo Grant the sum of $600,000 was to be deposited with the Mexican Government, $300,000 immediately and the balance in monthly instalments of $50,000. In order to meet those payments an agreement was entered into on February 7 and 10, 1853, with the approval of the Mexican Government, "under which Francisco de Palezieux Falconnet a British subject resident in Mexico, was to advance the above sum of $600,000 to the Mexican Treasury and accept Bill of Exchange payable to his order for the same drawn by William D. Lee on the house of A. G. Sloo of New

[1] Pronounced as "slow" according to Thomas H. Benton (see Congressional Globe, 33d Congress, 1st session, appendix, p. 1035, col. 3, June 26, 1854).

[2] Lee was a Texan and had held office in the Republic of Texas (see vol. 4, p. 733); nothing has been found in the records of the Department of State or in those of the Embassy at Mexico City indicating that Lee had official status under this Government at any time; but Alfred Conkling, Minister to Mexico, wrote that upon his arrival at his post (November 5, 1852; D.S., 16 Despatches, Mexico, No. 1, November 23, 1852) he found Lee "attached to the Legation, and acting also as the agent and Attorney of Mr Sloo"; and the "strong and decided convictions" of Lee "in no slight degree influenced" Conkling "in finally resolving to sign the Convention [of March 21, 1853] at once" (see Conkling's despatch No. 26, of March 24, 1853, in Manning, *op. cit.*, IX, 547).

[3] In an eighteen-page pamphlet issued for the Hargous interests (no title page and no date, but published not earlier than November 1856, and probably little later) it is said that there were six secret articles assented to by the parties to the Sloo Grant when it was signed (see "Memoir on the Subject of the concession of the Mexican Government to Don Jose de Garay . . .", in D.S., Papers Chiefly Relative to Claims, folder 68, Don José de Garay, transferred to The National Archives on inventory 137, item 26).

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Orleans. In case of failure of payment for whatever causes the grant or concession from the Mexican Government was pledged and mortgaged for this sum to Mr Falconnet, with power for him to proceed in a summary and extrajudicial manner and sell the concession 'to the highest bidder who may offer without any judicial formality, or to adjudicate it to himself if he chooses without these appearers or their representatives having any right of opposition or making any reclamation, since now in anticipation of the case, they confer upon him the most full irrevocable and efficacious power that can be required in law, with all the amplitude that may be legally sufficient' &c. &c." (instruction of Secretary of State Cass to John Forsyth, Minister to Mexico, July 17, 1857; D.S., 17 Instructions, Mexico, 122–49, 161–64; printed in Manning, *op. cit.*, IX, 223–34). The bills drawn on Sloo were not paid (*ibid.*; and see Conkling's despatch No. 38, of May 14, 1853, in *ibid.*, 574–75); and on June 2, 1853, Falconnet requested the Mexican Government to acknowledge him as the rightful owner of the concession. Notwithstanding the default of Sloo, he and his associates, on June 21, 1853, under a law of 1852, formed a Louisiana corporation, named the Tehuantepec Company, for the promotion of the Sloo Grant (see the cited instruction of Cass).

In May and again in September 1853 the British Minister at Washington, John F. Crampton, inquired of Marcy regarding "the course which the American Government proposes to adopt respecting the projected Interoceanic Communication by way of the Isthmus of Tehuantepec"; and in his confidential despatch No. 152, of September 5, 1853, Crampton thus reported a conversation with the Secretary of State on the subject (Library of Congress, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 5:566, excerpt):

> Mr Marcy said that the subject continued to be, as it was when he before spoke to me upon it, one of very great embarrassment to the United States Government. He added however, that I might apprize your Lordship confidentially that it was *not* the intention of the American Government to submit to Congress the Convention signed by Judge Conkling with the Mexican Government, in regard to what is commonly called the Sloo Contract. "I will", continued Mr Marcy, "tell you frankly how the matter stands at present, but as a "good deal depends upon the position which I have taken in it personally, I "must beg of you to consider what I say as strictly confidential."
>
> "You are aware that another grant for this route exists, called the 'Garay "Grant', once in the hands of some of your own people, now in the hands of "Americans. The validity of this grant is maintained by its present holders, "but unanimously denied by the Mexican Government and Congress. The "holders of the Grant have, however, brought a good deal of interest to bear on "the Government of the United States" (Mr Marcy here alluded by name to "some individuals of influence): they have as you know got a resolution through "the Senate in favour of their claim, they have already obtained great support "from the Executive and particularly from Mr Webster, and the Government is "in fact pretty far committed on their side—so much so that if we were now to "abandon them and submit the rival Contract to the Senate, they might with "some show of justice turn round, and sue us for an indemnity for the losses they "had sustained."
>
> "Is it then", I asked Mr Marcy, "the intention of the American Government "to insist on the recognition of the 'Garay Grant' by the Mexican Government?" He replied "No, at least *I* for one will never consent to do so. The 'Garay

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"Grant' has fallen into the hands of Speculators; I don't like to mention names "or enter into particulars, but in general I may say I am not satisfied with the "correctness of its proceedings. On the other hand, the Mexican Government "has repudiated it in every possible way—by their tribunals, by their President, "by their Congress,—in fact by every legal and constitutional means in their "power. It is true", he added, and in this we should be borne out by the prin- "ciple so ably laid down by Lord Palmerston in the Greek Affair,[1] if we thought "the decision manifestly unjust, (and perhaps it is unjust,) we would be justified "in appealing against it—but the appeal would be, War—and my opinion of "the 'Garay Grant' is not such as to allow me to concur in the propriety of such "a step."

I asked Mr Marcy whether there was any prospect, as I had seen reported, of a union of the interests under the Garay and Sloo Contracts by an arrangement between the holders. He replied that he did not know, but that such an arrangement might not be impossible, if the holders of the 'Garay Grant' could establish a claim to an indemnity from the United States Government, which now seemed to be their object.

In conclusion it would seem that the action of the United States Government in this matter is likely to be suspended for some time to come.

Some of the later history of the two grants is narrated in the instruction last mentioned (see also serial 930, pp. 33–36, 37–39). Falconnet, on April 16, 1855, "with a view of recovering his money . . . made a legal cession of his privilege" to Hargous; on November 26, 1855, the Mexican Government acknowledged Falconnet as "holder" [2] of the Sloo Grant, but did not recognize the cession thereof to Hargous; Falconnet, therefore, not having recovered any part of his advances of $600,000, claimed to be the owner of the Sloo Grant. In 1857 the Tehuantepec Company, Hargous (holder of whatever rights existed under the Garay Grant), and Falconnet united their interests in a new company, the Louisiana Tehuantepec Company, incorporated in Louisiana on July 30, 1857, under an act of March 14, 1855; that company thus acquired all the outstanding claims and interests in the Garay and Sloo Grants except the individual rights, if any, of Sloo himself, who was engaged in litigation with the Tehuantepec Company (for some of the details of the joinder, see Manning, *op. cit.*, IX, 229–30).[3]

[1] The case of Pacifico (see Moore, Digest, VI, 852–53; VII, 132–33).

[2] Not as owner, but only as holder, it seems; the distinction is pointed out in the opinion of Commissioner William Henry Wadsworth in D.S., 3 United States–Mexico Claims Commission, 1868, Opinions, 346–47, No. 57.

[3] In the archives of the Department of State is a tin box containing papers of Judah P. Benjamin which were seized by General Benjamin F. Butler during the Civil War. Among the papers are a number of bonds of the Louisiana Tehuantepec Company: 42 of $1,000 each, 29 of which are dated September 20, 1857, and 13 dated August 1, 1858; and 125 of $100 each, dated August 1, 1858. All were payable in ten years with interest at 8 percent; from all the bonds of September 20, 1857, the first three coupons have been clipped; and from all those of August 1, 1858 (except one that lacks the first seven coupons), the first coupon has been clipped. Also in the box are three stock certificates of the company for 941 shares belonging to Benjamin. Among other papers are some showing the joinder of the Hargous and Falconnet interests:

(*a*) A resolution of the company of July 30, 1857, to the effect that Hargous was jointly interested with the company in the result of negotiations which the president of the company and Benjamin were authorized to conduct with the Mexican Government in respect of the lands embraced in the Garay Grant.

(*b*) A letter to Benjamin dated at Mexico City October 16, 1857, from Fal-

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With official support from the Buchanan administration, two representatives of the Louisiana Tehuantepec Company, its president, Emile La Sère, and Judah P. Benjamin, then Senator from Louisiana, proceeded to Mexico City and there obtained from the Mexican Government a new and substitutionary concession, of September 7, 1857,[1] the Sloo Grant being annulled.[2]

The grant of 1857 was by no means the end of the Tehuantepec question, and it was not the last Tehuantepec grant (see The Tehauntepec Railway, Its Location, Features, and Advantages under the La Sere Grant of 1869); but the grant of 1857 was the end of all claims directly arising from the Garay [3] and Sloo Grants except that of Sloo individually. Sloo died in 1863; his widow presented to the Commission under the convention with Mexico of July 4, 1868, a claim for $21,900,000 (or alternatively, with enforcement of the Sloo Grant, for $11,900,000); the claim was dismissed (D.S., 1 United States–Mexico Claims Commission, 1868, No. 57; 3 *ibid.*, Opinions, 346–48, No. 57).

Filibustering expeditions and raids of American adventurers were another serious obstacle to good relations between the United States and Mexico (see Rippy, 85–105, and authorities there cited); the actual accomplishments of the invaders were small; the effects on sentiment were great. The incursion of William Walker into Lower California in November 1853 took place during the treaty negotiation of Gadsden at Mexico City; Gadsden is said to have thought that further negotiation would probably have resulted in the cession of Lower California "had not the insane expedition of WALKER caused SANTA ANNA to set his face resolutely against it" (see the editorial

connet, Manuel Escandon, Francisco Iturbe, and J. B. Jecker & Company, authorizing the former to recover bonds of the company for $900,000 and deliver them to the agents of the writers, less a commission of 5 percent.

(*c*) Receipts, dated September 16, 1858, for some $860,000 in bonds delivered by Benjamin to the agents of the four named.

(*d*) Settlement of September 11, 1858, between the company and the three last named of those four.

(*e*) Receipt to those three dated September 13, 1858, for $60,000 in interest coupons in payment of instalments of subscriptions for shares.

(*f*) Receipts to Hargous ($2,000) and Benjamin ($500) for instalment payments on subscriptions to shares.

[1] The circumstances of the negotiation of Benjamin and La Sère were extraordinary; they quarreled bitterly with the American Minister, John Forsyth, and were opposed at Mexico City by Pierre Soulé, who represented Sloo (see Manning, *op. cit.*, IX, 238–42, 929–36, 947–59).

For translations of the concession of September 7, 1857, and of the decree of September 3, 1857, annulling the Sloo Grant, see serial 930, pp. 54–59.

[2] Forsyth thought that the annulment of the Sloo Grant would support an argument for the obsolescence of Article 8 of the Gadsden Treaty, which was based on that grant (see Manning, *op. cit.*, IX, 934–35).

[3] The Hargous claim for $5,283,000 was, in a sense, before the Commission under the 1868 convention; but there was "no Memorial, no proof, in short nothing which can constitute a formal claim"; the file was said to be "one of the packages of papers sent by the Secretary of State" pursuant to his circular of February 23, 1870, which is printed in Moore, International Arbitrations, II, 1312–13; and the only order made was to consolidate the file with No. 57 (see the opinion of Commissioner Manuel María de Zamacona in D.S., 3 United States–Mexico Claims Commission, 1868, Opinions, 154, No. 2).

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account of an interview with Gadsden in the Charleston Courier, January 21, 1854, p. 2; also *ibid.*, January 25, 1854, p. 1).

From the Indian problem arose claims of Mexico and Mexican citizens against the United States based on Article 11 of the Treaty of Guadalupe Hidalgo; as presented to the Commission under the convention between the United States and Mexico of July 4, 1868, the amount thereof was over $31,800,000; whether such claims (if not barred by the Gadsden Treaty) had legal validity, and if so in what sum, was never adjudicated; the decision of the Umpire of the Commission under the 1868 convention was to the effect that by the wording of Article 2 of the Gadsden Treaty all claims under Article 11 of the Treaty of Guadalupe Hidalgo had been released (see Moore, International Arbitrations, III, 2430–47).

There were American claims against Mexico; some of those alleged were unfounded, and others were stated at exaggerated amounts by the claimers; very few of the claims had been critically examined, so that their real worth and importance as a whole were overestimated; the demand of those interested in the Garay Grant for $5,283,000 has been mentioned.

Senate Proceedings and Amendments

In accordance with amendments proposed in the first instance by the Senate of the United States, the terms of the Gadsden Treaty were radically altered after signature.

Articles 1 (in part), 2, 3, 4, and 8 of the treaty as signed by the Plenipotentiaries read thus:

Article 1st

The Mexican Republic agrees to designate the following as her true limits with the United States for the future, Retaining the same dividing line between the two California's, as already defined and established according to the 5th Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall [1] proceed from the point where the aforesaid line intersects the River Colorado, along the middle of the deepest channel of this river, to a point distant two marine leagues to the North of the most Northern part of the Gulf of California, thence in succession a right line to the intersection of the 31st Parallel of Latitude North with 111° Longitude West of Greenwhich Whence another right line to the 31°47′30″ of North

Artículo 1º

La República Mexicana conviene en señalar para lo succesivo como verdaderos límites con los Estados Unidos, los siguientes: Subsistiendo la misma línea divisoria entre las dos Californias, tal cual está ya definida y marcada conforme al artículo quinto del Tratado de Guadalupe Hidalgo, los límites entre las dos Repúblicas [2] seguirán, desde el punto en que la expresada linea corta el Rio Colorado, por medio del Canal mas profundo de este Rio, hasta un punto distante dos leguas marinas al Norte de la parte mas boreal del Golfo de Californias; en seguida una línea recta hasta la interseccion del paralelo de 31° latitud Norte con el Meridiano 111° de longitud Oeste de Greenwich: despues otra recta hasta encontrar el Rio Grande ó Bravo del Norte á la

[1] By the Senate amendment to this article the remainder of this paragraph was stricken and new matter substituted.

[2] The effect of the Senate amendment to this article was to delete from this point to and including "aquella laguna" and to insert new matter; and while that amendment did not require any change in the Spanish up to this point, for "marcada" is "establecida" in the Mexican instrument of ratification.

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Latitude where the same will cross the Boundary Line descending the Rio Grande or Bravo del Norte to the Gulf of Mexico, as defined in the 5th Article of the Treaty of Guadalupe—And it is agreed, that; should the line before described, (from the intersection of the parallel 31° of Latitude North with the Meridian 111° West of Greenwhich to its crossing the Rio Grande in latitude 31°47′30″) traverse the lake Guzman,[1] said line shall be broken so as to form an angle at a point distant one marine league South of the most Southern part of that lake

For the performance of this portion. . . .

ARTICLE IIP

With the like desire to maintain the most perfect peace and friendly relations between both Countries, it has been agreed that to remove all occasion of dispute on account of reclamations to the present date founded on alleged Indian incursions, and to avoid all contests upon the true spirit and intention of the obligation stipulated in the 11th article of the Treaty of Guadalupe; the same has been and is hereby abolished and annulled—The Government of the United States agrees, notwithstanding this abrogation and annulment, to provide such additional laws, and regulations as the subject may in good faith require, making it a highly penal offence on the part of any inhabitant of the United States, or the territories thereof, to purchase or receive horses, mules, cattle, or property of any kind, knowing the same to have been stolen within the limits of Mexican territory by Indians, or by any other persons—And furthermore agrees to return on demand to their legitimate owners what may have been thus stolen, so soon as the same shall have been recovered by the Authorities of the United States—And in the event of any person or persons captured upon Mexican territory, being carried within the boundaries of the United States, the Government of the latter engages to use every fair and reasonable means that the nature and circumstances of the case will admit, to rescue and return such captives to their own country, or deliver them to an agent or representative of the Mexican Government

latitud de 31°47′30″, desde donde continuarán dichos límites descendiendo el Rio Grande ó Bravo del Norte, hasta el Golfo de México, cual se definiéron en el artículo quinto del Tratado de Guadalupe.

Y se conviene en que, si atravesase la laguna Guzman la linea descrita ántes [1] (desde la interseccion del paralelo de 31° de latitud Norte con el meridiano 111° Oeste de Greenwich hasta cortar el Rio Grande á la latitud de 31°47′30″,) dicha línea se descompondrá en dos que concurran formando ángulo en un punto distante una legua marina al Sur de la parte mas austral de aquella laguna. Para la egecucion de esta parte. . . .

ARTÍCULO 2º

Con el mismo deseo de mantener la mas perfecta paz y buenas relaciones entre ambos Paises, se hán convenido, que para remover toda ocasion de disputa con motivo de las reclamaciones fundadas hasta la fecha en alegadas incursiones de los Indios, y para evitar toda contienda sobre el verdadero espíritu é intencion de la obligacion estipulada en el artículo undécimo del Tratado de Guadalupe, este há sido, y queda por el presente derogado y anulado.

No obstante esta derogacion y anulacion, el Gobierno de los Estados Unidos conviene en espedir las leyes y reglamentos adicionales que el asunto de buena fé requiera, constituyendo en delito altamente penal por parte de cualquier habitante de los Estados Unidos ó de sus territorios, el comprar ó recibir caballos, mulas, ganado, ó efectos de cualquier especie, sabiendo que los mismos hán sido robados dentro de los límites de territorio Mexicano, por Indios ó por cualesquiera otras personas: Y ademas, dicho Gobierno conviene en devolver á sus legítimos dueños, cuando lo demandaren, lo que de ese modo haya sido robado, despues de haber sido recobrado por las autoridades de los Estados Unidos.

Y en caso de que cualquiera persona ó personas cautivadas cautivadas en territorio Mexicano fueren llevadas dentro de los límites del de los Estados Unidos, el Gobierno de los mismos se compromete á emplear todos los medios justos y racionales que la naturaleza y

[1] The line described does not traverse Lake Guzman.

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requiring simply the repayment to the officer or agent of the United States, who may so deliver or return them, the expenses incurred in the maintenance and transmission of the rescued captives—Finally the Government of the United States promises that on any occasion, she may have to remove the Indians from any point of her Territory or to settle thereupon her own Citizens, especial care shall be taken, not to place said Indians under necessity of seeking new homes by means of incursions into the Mexican Territory

circunstancias del caso admitan, para rescatar y devolver tales cautivos á su propio Pais, ó para entregarlos á un Agente ó Representante del Gobierno Mexicano, exigiendo simplemente que se reembolsen al funcionario ó Agente de los Estados Unidos, que de ese modo los entregue ó devuelva, los gastos erogados en la traslacion y manutencion de los dichos cautivos rescatados.

Finalmente, el Gobierno de los Estados Unidos promete que siempre que tenga que desalojar á los Indios de cualquier punto de su territorio, ó que establecer en él á Ciudadanos suyos, cuidará muy especialmente de no poner á dichos Indios en la necesidad de buscar nuevos hogares por medio de incursiones sobre el territorio Mexicano.

ARTICLE III?

In consideration of the Grants received by the United States and the obligations relinquished by the Mexican Republic pursuant to this Treaty The former agree to pay to the latter, the sum of Fifteen Millions of Dollars in gold or silver coin at the Treasury at Washington, one fifth of the amount on the exchange of ratifications of present Treaty at Washington, and the remaining four fifths in monthly instalments of Three Millions each, with interest at the rate of six per cent per annum, until the whole be paid, the Government of the United States reserving the right to pay up the whole sum of 15 millions at earlier date as may be to her convenient

ARTÍCULO 3º

En atencion á las concesiones que reciben los Estados Unidos, y á las obligaciones que abandona la República Mexicana en virtud de este Tratado, Aquellos convienen en pagar á Esta, la suma de quince millones de pesos, en moneda de oro ó plata, en la Tesoreria en Washington; una quinta parte de esa cantidad al cangearse las ratificaciones del presente Tratado en la la expresada Ciudad de Washington, y las cuatro quintas partes restantes en abonos mensuales de tres millones de pesos cada uno de ellos, con interes á razon de seis por ciento al año hasta el pago total; reservandose el Gobierno de los Estados Unidos el derecho de pagar la suma íntegra de quince millones de pesos en fecha anterior, segun le sea conveniente.

The United States also agree to assume all the claims of their Citizens of whatsoever right title or foundation which may have arisen since the date of the signature of the Treaty of Guadalupe or which may not have been provided for therein or of any Corporation, Company, or Citizen of the same including the claim of the so called concession to Garay whose lawful existence Mexico does not recognize, even as implied; thus extinguishing this, among the other claims of Citizens of the United States against the Republic of Mexico, Said United States obliging themselves not to make any payment on account of the so called Concession to Garay, without having previously delivered to the Agent of the Mexican Government accredited at

Los Estados Unidos convienen tambien en tomar sobre sí todas las reclamaciones de sus Ciudadanos, cualquiera que sea el derecho, título ó fundamento de que procedan, desde la fecha de la firma del Tratado de Guadalupe, ó á que no se haya provisto en él, ó de cualquier Corporacion, Compañia, ó Ciudadano de los mismos Estados, inclusa la reclamacion de la llamada Concesion de Garay, cuya legal subsistencia México no reconoce ni aún implícitamente; extinguiendo así esta reclamacion entre las demás de Ciudadanos de los Estados Unidos contra la República de México; obligandose dichos Estados Unidos á no hacer pago alguno por cuenta de la llamada Concesion de Garay, sin haber préviamente entregado al Agente del Gobierno Mexicano

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Washington, all the evidence and documents used by the holders of said Concession in establishing their rights and claims legally relinquished in favor of Mexico by such holders and Claimants, and it is agreed in the reciprocal release of obligations that the Mexican Republic exonerates the United States of America from all claims of Mexico or Mexican Citizens which may have arisen since the date of the Treaty of Guadalupe. So that each Government in the most formal and effective manner shall be exempted and exonerated of all obligations to each other respectively whether of themselves or in behalf of their respective Citizens up to the date of the signature of the Present Treaty

acreditado en Washington, todas las pruebas y documentos que empléen los tenedores de dicha Concesion para establecer sus derechos y accion, legalmente renunciada á favor de México por dichos tenedores y reclamantes. Y en el recíproco descargo de obligaciones, se conviene que la República de México exonera á los Estados Unidos de América de todas las reclamaciones de México y de sus Ciudadanos, que hayan podido originarse desde la fecha del Tratado de Guadalupe; de modo que cada Gobierno queda exento y exonerado de la manera mas formal y efectiva, de toda obligacion hácia el otro respectivamente, tanto para con él mismo como para con sus respectívos Ciudadanos, hasta la fecha de la firma del presente Tratado.

ARTICLE IVth

The Government of the United States shall organize a Board of Commissioners which shall meet in the City of Washington or of Mexico as the President of the United States may direct within one year from the date of the exchange of the ratifications of this Treaty, for the purpose of examining and deciding the claims assumed by the United States in the preceding Article, according to the principles of Justice, the law of Nations, and the Treaty in force between the Two Governments, and whose awards shall be final and conclusive; and the United States exonerating Mexico from all demands on account of the claims of their Citizens mentioned in the preceding article, and considering them entirely and forever cancelled, whatever their amount, undertake to make satisfaction for the same, in a sum not exceeding Five Millions of Dollars and if for the purpose of discharging their duties the Board of Commissioners should meet in the Capital of the Mexican Republic, the Government of the same will afford all necessary protection for the continued pacific exercise of its functions, and will extend every facility in the furnishing to the Commissioners and claimants all such documents establishing their rights, as they might require and which may be within the extent of its reach to supply

ARTÍCULO 4º

El Gobierno de los Estados Unidos organizará una junta de Comisionados que se reunirá en la Ciudad de Washington ó en la de México, segun lo dispusiere el Presidente de los mismos Estados, dentro de un año contado desde la fecha del cange de las ratificaciones de este Tratado, con el fin de examinar y decidir las reclamaciones que los Estados Unidos toman sobre sí por el artículo precedente, de conformidad con los principios de justicia, el Derecho de gentes, y el Tratado en vigor entre los dos Gobiernos; y sus fallos serán finales y concluyentes; y los Estados Unidos, exonerando á México de toda demanda por cuenta de las reclamaciones de sus Ciudadanos mencionadas en el artículo anterior, y considerandolas chanceladas enteramente y para siempre cualquiera que fuere su monto, se obligan á satisfacerlas en una suma que no exceda de cinco millones de pesos. Y si con el fin de llenar sus deberes la Junta de Comisionados se reuniere en la Capital de la República Mexicana, el Gobierno de la misma le dispensará toda la proteccion necesaria para el continuo y pacífico egercicio de sus funciones, y le proporcionará cuantas facilidades pudiere ministrando á los Comisionados y reclamantes todos los documentos que para acreditar sus derechos pidieren, y que esté á su alcance proporcionar.

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ARTICLE VIIIth

The two high Contracting Powers fully impressed that under the auspices of peace, and upon the basis of mutual good faith and of the respect which Nations reciprocally owe, it is that their prosperity and well being increase, especially when from vicinity their interests grow to be mingled and identified, And recognizing the reciprocal obligations of Civilized Governments and the acknowledged provisions of the laws of Nations, agree by the Present in proof of that entire confidence which they mutually entertain and of that friendship which they desire to be as perfect, unalterable and complete as possible, that whenever the tranquility and interior repose of either country shall be threatened or disturbed by unlawful invasions of any of the eitizens or subjects of either Power against the Territory of the other respectively; they will cheerfully cooperate in their endeavors to supress all such attempts—They mutually and especially obligate themselves in all cases of such Lawless enterprizes which may not have been prevented through the Civil Authorities before formation, to aid with the Naval and Military forces, on due notice being given by the aggrieved Party of the aggressions of the Citizens and Subjects of the other, so that the Lawless Adventurers may be pursued and overtaken on the High Seas, their elements of War destroyed and the deluded Captives held responsible in their persons, and meet with the merited retribution inflicted by the laws of Nations against all such disturbers of the peace and happiness of contiguous and friendly Powers—It being understood that in all cases of successful pursuit and capture, the delinquents so captured shall be Judged and punished by the Government of that nation to which the vessel capturing them may belong conformably to the laws of each Nation

ARTÍCULO 8º

Las dos Altas Partes Contratantes convencidas plenamente de que bajo los auspicios de la paz, y sobre la base de la buena fé mútua y del respeto que se deben recíprocamente las Naciones, es como pueden acrecentar su dicha y bienestar, especialmente cuando sus intereses por la vecindad se confunden y vienen á identificarse, y penetradas ademas de las obligaciones recíprocas de los Gobiernos civilizados y de las reconocidas disposiciones del Derecho de gentes, se convienen por el presente, en prueba de la plena confianza que se dispensan, y de la buena amistad que quieren sea la mas perfecta, inalterable y cumplida posible, que siempre que la tranquilidad y reposo interior de cada Pais fueren amagados ó alterados por invasiones ilegales de cualesquiera de los Ciudadanos ó súbditos de cada Potencia contra el territorio de una ú otra respectivamente, con gusto cooperarán en sus esfuerzos para reprimir todos esos atentados; y mútua y especialmente se obligan en todos los casos en que esas ilegales empresas no hayan podido evitarse ántes de su formacion por las Autoridades civiles, á auxîliar con fuerzas navales y militares dado que sea aviso por la parte agredida, de las agresiones de los Ciudadanos de la otra, para que los criminales aventureros sean perseguidos y aprehendidos en alta mar, sus elementos de guerra destruidos, y los estraviados aprehendidos hechos responsables en sus personas, y reciban el condigno castigo impuesto por la Ley de las naciones contra semejantes perturbadores de la paz y bienestar de Potencias contiguas y amigas; quedando entendido que en todos los casos de fructuosa persecucion y aprehension, los delincuentes de ese modo apresados, serán juzgados y castigados por el Gobierno de la Nacion á que pertenezca el buque aprehensor, de conformidad con las leyes de cada una de las dos Naciones respectivamente.

In the signed treaty there were ten articles; by the amendments proposed by the Senate (and accepted first by President Pierce and then by the Mexican Government) Articles 1 (in part; the boundary definition) and 2 were recast; for Articles 3 and 4 was substituted Article 3 of the final text; Article 8 was deleted; Articles 5, 6, 7, and 9 were renumbered as 4, 5, 6, and 7 respectively; the last word of Article 7 (Article 9 of the signed treaty) was corrected from "reaffixed" to "re-affirmed"; a new Article 8 was written; Article 10 became

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Article 9, with the period for the exchange of ratifications enlarged from four months to six; and in the final sentence the year of independence of the United States was properly stated as "seventy eighth" in lieu of "Seventy Seventh".

It seems that the treaty was delivered to Pierce by Christopher L. Ward[1] (as to whom, see below under the heading "The Negotiations") on January 19 (New York Herald, January 20, 1854, p. 1); not until February 10 was it sent to the Senate with the presidential message of that date (Executive Journal, IX, 238–39); therein four amendments[2] were recommended, as follows:

1. To add to Article 2:

> And the Government of Mexico agrees that the stipulations contained in this article to be performed by the United States shall be reciprocal, and Mexico shall be under like obligations to the United States and the citizens thereof as those herein above imposed on the latter in favor of the Republic of Mexico and Mexican citizens.

2. To recast the second paragraph of Article 3 to read thus:

> The United States also agree to assume all the claims of their citizens against the Mexican Republic which may have arisen under treaty or the law of nations since the date of the signature of the treaty of Guadalupe. And the Mexican Republic agrees to exonerate the United States of America from all claims of Mexico or Mexican citizens which may have arisen under treaty or the law of nations since the date of the treaty of Guadalupe, so that each Government in the most formal and effective manner shall be exempted and exonerated of all such obligations to each other respectively.

The chief aim of this amendment was to omit claims arising on contract (notably the Garay Grant) from those assumed by the United States; the limitation to claims "under treaty or the law of nations" was deemed to exclude contract claims (see the report of Marcy of March 29, 1854, printed below).

3. To strike from Article 8 all after the word "attempts".

4. To substitute "seventy-eighth" for "seventy-seventh" in the final phrase.

No accompanying papers were sent in with the treaty; there was the usual reference to committee[3] and order to print (Executive

[1] Gadsden and Ward left Mexico City for New Orleans via Veracruz on January 4; from New Orleans they traveled together by rail as far as Branchville, South Carolina, where the treaty was entrusted to Ward; thence Gadsden went on to Charleston and Ward to Washington (see Gadsden's letter of January 12, 1854, from New Orleans, quoted below under the heading "The Negotiations").

[2] With a private note of January 31, 1854, Marcy sent to Almonte a draft (which is not available) "of the amendments which are prepared to the Treaty lately negotiated by General Gadsden", adding in a postscript that it might be necessary "to qualify the term 'claims' in such a manner as not to have it extended to ordinary transactions or to debts on contract about which there could not be any government interference" (Library of Congress, 47 Marcy Papers, 43419).

[3] The Senate Committee on Foreign Relations was composed of Senators James M. Mason, of Virginia (Chairman); John Slidell, of Louisiana; John M. Clayton, of Delaware; Stephen A. Douglas, of Illinois; John B. Weller, of California; and Edward Everett, of Massachusetts.

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Journal, IX, 239–40); the subsequent proceedings in the Senate were complex and somewhat prolonged.[1]

Almost immediately after the date of the presidential message, its text and the terms of the treaty were published in the press;[2] a senatorial investigation of the leak proved fruitless (see *ibid.*, 246–47, 249, 260, 271–73).[3]

On March 9 the treaty was reported from the Committee on Foreign Relations (*ibid.*, 260–62); in its recommendations the committee retained the wording of the presidential suggestions, but proposed specifically to include among the claims assumed, that based on the Garay Grant, by writing these words after the first sentence of the second paragraph of Article 3 as proposed by Pierce:

> Including any just and proper indemnity to the holders of the so-called concession to Garay (being citizens of the United States) the character of which is known to the correspondence between the two Governments, but not to include compensation for any loss of anticipated profits.

Other amendments put forward by the committee, apart from drafting changes and a clarification of the final clause of Article 4, were these: (1) to add to the boundary definition this proviso:

> Provided, That "the most northern part of the Gulf of California" mentioned in this article shall be indicated by a parallel of latitude to be drawn at the distance of one marine league south of the most southern point of the island called "Montague Island", as the same is laid down on the chart[4] of "the reconnaissance of the Colorado River," by George H. Derby, lieutenant United States Topographical Engineers, December, 1850, which chart, attested by the signature of the Secretary of State of the United States, and bearing the seal of the Department of State of the United States, for greater certainty is hereto annexed.

(2) to insert in Article 2 words of annulment of Article 33 of the treaty of April 5, 1831 (Document 70); (3) to insert in Article 3 a provision reserving the last monthly instalment payment until the establishment of the new boundary.

On March 15 the committee further reported "without amendment"[5] an article in aid of the Sloo Grant proposed by Senator John Bell, of Tennessee (see *ibid.*, 264, 266); that proposal was the basis of Article 8 of the final text; in its form as first put forward the opening words contained mention of "the mixed company of A. G. Sloo, and others" as one (the Mexican Government being the other) of the contracting parties of February 5, 1853; and it included this para-

[1] For the divided opinions in the Senate and the press reports of the time, see Garber, 108–35; a summary of the Senate groups is in Rippy, 149.

[2] See New York Herald, February 15, 1854, p. 4; the substance of the treaty terms had been printed in the issue of that newspaper for January 20, 1854.

[3] A pencil notation on one of the Senate documents bound in a copy of 34 Regular Confidential Documents (p. 16) indicates that in 1853 the number of copies of confidential prints received in the Senate was 90 and that 82 thereof were thus distributed: 1 to the Committee on Foreign Relations; 56 to Senators; 25 to the Department of State.

[4] The chart of Lieutenant Derby entitled "Reconnaissance of the Colorado River made by order of Maj. Gen. P. F. Smith . . . " is with Senate Executive Document No. 81, 32d Congress, 1st session (serial 620).

[5] This was not rejection of the proposal (cf. Garber, 121, 125).

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graph which was adapted from Article 4 of the unperfected convention of March 21, 1853 (Senate Confidential Executive Document No. 15, 33d Congress, 1st session, 34 Regular Confidential Documents, 240; for the English version of the convention signed March 21, 1853, D.S., Unperfected J2, and a translation of the Sloo contract, see Manning, *op. cit.*, IX, 540–46, footnote):

> If at any time the two governments should unhappily be at war with each other, neither nation will interrupt the transit of persons and property of either nation, not contraband, which may be sent across the Isthmus [of Tehuantepec], nor vessels of either nation or of the company, at a less distance than sixty miles from the termini of said transit way.

After consideration of the treaty on various dates (see Executive Journal, IX, 263–73, *passim*), the first vote was taken on April 3, when the proviso reported as an amendment to the boundary definition of Article 1 was accepted by 33 yeas to 2 nays (*ibid.*, 277); the next day, on a motion by Senator James Shields, of Illinois, to strike out and insert, a simple majority (19 to 17) voted [1] to retain the boundary clauses of Article 1, with the added proviso; this meant, under the rules of the Senate [2] then (not now) prevailing, that those clauses were deleted; a simple majority (21 to 20) then voted for a line to run from that dividing the Californias where it crossed the Colorado River, down that river to its mouth, thence down the middle of the Gulf of California to the 31st parallel of north latitude, and east along that parallel to the Rio Grande (*ibid.*, 278–79); so that proposal also failed. On April 5 a proposal by Senator William M. Gwin, of California, for a line like that last mentioned as far as the intersection of the 31st parallel with the 111th meridian, and thence (as in the signed treaty) by a "right line" to the Rio Grande at 31°47′30″ north latitude, was decisively rejected (12 yeas, 26 nays); then, after reconsideration, the boundary clauses of the signed treaty (with the added proviso) again failed, only a simple majority (22 to 16) voting therefor (*ibid.*, 280–81).

In all the amendments to Article 1 thereafter put forward, the line was described from east to west, as in the final text, and not, as in the signed treaty, from west to east. On April 10 this clause, offered by Senator Gwin, was rejected by 18 yeas to 26 nays (*ibid.*, 284):

> Beginning at the point on the Rio Grande where the parallel of 31 degrees 47 minutes 30 seconds of north latitude crosses the same; thence running west one hundred and fifty miles; thence due south thirty miles; thence westerly in a straight line until it reaches the Gulf of California one marine league south of the most southern portion of the Bay of Adair, and to the middle of said gulf; and thence up the middle of said gulf and the Colorado River until it intersects the present boundary line between the United States and Mexico.

[1] The various boundary clauses submitted to vote in the Senate are illustrated on the maps facing p. 330.

[2] Regarding those Senate rules, see vol. 5, pp. 251–52.

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More than two thirds of the Senators present then voted (32 to 14) to insert these words, proposed by Senator Thomas J. Rusk, of Texas (*ibid.*):

be as follows: Beginning at the point on the Rio Grande where the parallel of 31 degrees 47 minutes of north latitude crosses the same; thence west one hundred and fifty miles; from whence a right line shall be run due south thirty miles; from whence a straight line shall be run due west until it reaches the Rio Colorado or Gulf of California; thence up the middle of the said gulf and Colorado River until it intersects the present boundary line between the United States and Mexico.

Two days later (April 12) the action last taken was reconsidered and this clause, also proposed by Senator Rusk, was voted (30 yeas, 13 nays; *ibid.*, 289–90):

be as follows: Beginning at the point of the Rio Grande, where the parallel 31°47′ of north latitude crosses the same, thence due west one hundred miles, thence south twenty English miles, thence west to 111th meridian of longitude west from Greenwich, thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado Rivers, thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

Then, after the deletion *nem. con.* of Article 2, there was substituted therefor (by 39 yeas to 3 nays) the same wording as that of the final text (*ibid.*, 290–91); and Articles 3 and 4, which were unanimously stricken out, were replaced by this clause [1] as Article 3 (*ibid.*, 291–92):

[1] This was on motion of Senator Rusk, of Texas; in a paper of April 6, 1854 (Senate Confidential Executive Document No. 15, 33d Congress, 1st session, 34 Regular Confidential Documents, 241–42), a very similar amendment is one of those "intended to be proposed" by Rusk; another is the boundary clause voted on April 10 (except that the parallel mentioned is 31°47′30″ instead of 31°47′); others are these clauses for Articles 2 and 3, which were not moved in the Senate:

ARTICLE II.

The government of Mexico hereby releases the United States from the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo, together with all claims of her citizens against the government of the United States, arising under the provisions of that article, as well as all other claims arising under said treaty or the law of nations. And the government of the United States in like manner releases the government of Mexico from all claims of the citizens of the United States, arising under treaty or the law of Nations.

ARTICLE III.

The government of the United States agrees to restrain, as far as may be in its power, all unlawful expeditions of its citizens against the territory or citizens of Mexico.

Also in the same paper are proposals to strike Articles 7, 8, and 9 of the signed treaty; no motion to strike Article 7 was made; and on the motions of others, on April 12, to delete Articles 8 and 9, Rusk voted to retain them (see Executive Journal, IX, 292–93).

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In consideration of the foregoing stipulations the Government of the United States agrees to pay to the Government of Mexico, in the City of New York, the sum of seven millions of dollars, five millions of which shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining two millions as soon as the boundary line shall be surveyed, marked, and established.

Thus the Senate refused to agree to the assumption by the United States of *any* claims against Mexico, neither those "under treaty or the law of nations" nor contract claims. The report of Marcy on the subject of claims must have been of influence; that report, of March 29, 1854, although not printed, had been sent to the Senate with the presidential message of the same date (Executive Journal, IX, 274–75); its text follows (D.S., 7 Report Book, 58–62); the accompanying list of American claims (printed below under the heading "American Claims against Mexico") comprised fifty-five, of a total of $9,444,-519.85 (including the Garay Grant claim for $5,283,000), six of the claims being for unstated amounts:

The Secretary of State, to whom was referred the Resolution of the Senate of the 21st instant requesting the President "to inform the Senate what are the claims of Mexico and the citizens of Mexico on the United States proposed to be provided for in the Treaty negotiated by Mr Gadsen, and also, what are the claims of the United States, or the citizens thereof proposed to be provided for by the same Treaty, and in the amendments proposed to said Treaty, distinguishing the claims which would be provided for by the Treaty and as proposed to be amended by the President and Committee on Foreign Relations, and that the President be, also, requested to communicate to the Senate all the information in his possession, or in that of the Executive Departments relative to the amount and justice of said claims, and, also, the names of the claimants so far as known to the Executive",— has the honor to report to the President, that the documents in this Department do not furnish the means of specifying the claims of Mexico and her citizens upon the United States which would be provided for by the Treaty, either as negotiated by our Minister at Mexico or as proposed to be amended. Neither the particulars of the claims by the Mexican Government or its citizens have been presented to this Government except in a very few instances. The diplomatic correspondence between the two governments only discloses the nature and character of the claims for which Mexico may consider herself entitled to indemnification. By far the largest class of these arises from the alleged neglect of the United States to fulfil the Stipulation in the 11th Article of the Treaty of Guadalupe relative to Indian incursions. The two Governments differ in regard to the true meaning of that article. Mexico claims full compensation for all damages which have resulted from those incursions since the date of that Treaty. She, also, claims of the United States damages for the destruction of property and other losses occasioned by a hostile expedition against Metamoras, and by other marauding excursions into her territory from the United States other than those by Indians. She alleges that these expeditions were fitted out in the United States, and that the adventurers were mostly American citizens. It is scarcely necessary to say that the validity of both classes of these claims is denied by this government. Should the Treaty be ratified as concluded by the negotiator, or as amended, all claim for reparation from the United States would be removed.

The accompanying list of claims of the citizens of the United States against Mexico includes, it is believed, all which have been brought to the notice of the Department, and the origin of them, so far as the papers on file disclose that fact.

The statement has been made out from the documents presented by the complaining parties. Many of them are unsustained by proof, and some so imperfectly stated as scarcely to disclose the true motive of the acts complained of. On the other hand, several of the more important claims are accompanied with

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very voluminous documents which it would be necessary to examine critically in order to ascertain precisely the character of the claims. Those described in the accompanying statement as claims "for seizure of goods", "excess of duties", &c, are of this nature. Many of the documents are in Spanish of which no translations have been furnished, or, as yet, made at the Department. To make translations of them would require much time and labor.

There are, undoubtedly, a number of claims by our citizens presented to our Legation at Mexico, of which no account is found in this Department.

In the condition they now are, it would be very difficult, if not impossible, to classify them in the way contemplated by the Resolution of the Senate. The Treaty as negotiated would include all claims well founded of our citizens on Mexico, as well those arising on contract, as those resulting from tortious acts, since the date of the Treaty of Guadalupe, and those, also, if any, not provided for by that Treaty. "As amended by the President", the first class,—claims arising on contracts merely, would not be provided for by the Treaty. It is presumed that the amendment proposed by the Committee of the Senate on Foreign Relations would make an exception to the excluded class.

Article 8 of the signed treaty also failed of acceptance on April 12 (22 yeas, 16 nays); but Article 9 was retained by 25 votes to 10 (Executive Journal, IX, 292–93).

On April 17 the new article proposed by Senator Bell (in very nearly its original form, except for the omission of the paragraph above quoted) was defeated by 22 yeas to 17 nays, less than a two-thirds majority (*ibid.*, 299).

Thus far the proceedings of the Senate had been as in Committee of the Whole; the amendments which had been passed as in Committee were now all approved in the Senate by votes of varying range, the closest of which was 34 to 13; the boundary definition was accepted by 34 to 11; the Sloo article put forward by Senator Bell (now slightly modified) received once more an insufficient majority (28 yeas, 18 nays); the vote was then taken on the resolution of advice and consent, embodying all the amendments; and that resolution failed (April 17) by 27 yeas to 18 nays, less than two thirds (*ibid.*, 299–306).

Comparison of the terms of the resolution which failed on April 17 with the final text shows these differences: (1) those two courses of the boundary which, by the treaty, run westward for about 165 miles along the parallel of 31°20′ to the 111th meridian and thence direct to a point on the Colorado River 20 miles below the junction thereof with the Gila, were, by the resolution, respectively courses running due west to the same meridian along a parallel about 11 miles north of 31°20′ and thence to the same terminal point on the Colorado River; (2) the payment (Article 3) was $7,000,000 in the resolution instead of $10,000,000 in the treaty; (3) the resolution called for a treaty of eight articles, Article 8 of the final text not being included in any form; (4) the corrections of one word in Article 7 (as renumbered) and one word in the concluding sentence were not made by the resolution.

The vote of April 17 was ordered reconsidered the next day (*ibid.*, 306); and a week later (April 25) the resolution of advice and consent was recast in its final form; the boundary definition was adopted by 39 to 7; the closest vote was that on the Tehuantepec clauses (Article 8;

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the Sloo proposal of Senator Bell), which were inserted by 30 yeas to 14 nays; the passage of advice and consent with the amendments was by 33 to 13 (*ibid.*, 309–15).

The amended treaty differed from the signed treaty in these essentials: (1) the boundary clause was altered; (2) the payment to Mexico was reduced from $15,000,000 to $10,000,000; (3) no claims of American citizens were assumed by the United States, all remaining intact; (4) the Mexican claims against the United States for Indian depredations were extinguished; (5) Article 33 of the treaty of April 5, 1831 (Document 70), was abrogated;[1] (6) all the Indian-incursion clauses and the invasion clauses of the signed treaty were deleted; (7) Tehuantepec clauses (Article 8) were inserted.

Logically, the latitude figure (31°47′30″) in the second paragraph of Article 4 should have been altered to 31°47′, so as to conform to the line of Article 1; but the inconsistency seems not to have been noticed at the time.

During the pendency of the treaty nine presidential messages transmitted relevant papers to the Senate in response to requesting resolutions;[2] those messages were dated respectively February 15, March 7, 14, 21, 29, April 1, 5, 11, 13; all of them except that of February 15 are printed in Richardson (V, 232–38, *passim*) and also in the Executive Journal; but only two of them, those of February 15 and March 14, were printed at the time with the transmitted papers (see Executive Journal, IX, 240, 247, 260, 265–66, 268–69, 271, 274–75, 276–77, 279–80, 283, 285–86, 298). With the message of February 15, 1854, were transmitted a copy of the Tehuantepec Convention signed at Mexico City March 21, 1853, and a translation of the Sloo Grant, a copy of which was annexed to that convention (Senate Confidential Executive Document No. 17, 33d Congress, 1st session, 34 Regular Confidential Documents, 273–87); with the message of March 14, 1854, was transmitted correspondence relevant to that convention (Senate Confidential Executive Document No. 16, 33d Congress, 1st session, *ibid.*, 249–72).

The papers transmitted to the Senate, but not printed at the time, were: (*a*) with the message of March 7, diplomatic correspondence and instructions regarding Article 11 of the Treaty of Guadalupe Hidalgo, comprising thirty-two items, some in part only and some with enclosures; the earliest is an instruction of Clayton to Letcher of November 10, 1849, and the latest the note of Marcy to Almonte of December 22, 1853; (*b*) with the message of March 21, ten items, six of which are the relevant instructions to Gadsden; the others are Gadsden's despatch (in part) of November 20, Gadsden's note to Bonilla of November 29, Bonilla's note to Gadsden of November 30,

[1] In arguing the Piedras Negras affair (as to which, see Moore, International Arbitrations, III, 3035–37) Marcy fell into a surprising error by asserting in a note to Almonte of January 23, 1856, "that the obligations of Mexico to the United States pursuant to the 33d. Article of the Treaty of 1831 are still in full force"; Almonte did not fail to notice the slip in his note of January 26, 1856 (see Manning, *op. cit.*, IX, 197–98, 820–22).

[2] One of the requests was antecedent to the submission of the treaty (see Executive Journal, IX, 183).

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and the first five of the six protocols of the negotiations of December 1853 (for the papers enumerated, see below under the heading "The Negotiations"); (*c*) with the message of March 29, a report of Marcy of the same date regarding claims (that report is printed above; the list of claims accompanying it is printed below under the heading "American Claims against Mexico"); (*d*) with the message of April 1, the letter of Ward to Gadsden dated November 14, 1853 (printed below under the heading "The Negotiations"); (*e*) with the message of April 5, excerpts from three despatches on the subject of expeditions organized in California for invasion of Sonora; (*f*) with the message of April 11, a report of Marcy calling attention to papers previously transmitted regarding Article 11 of the Treaty of Guadalupe Hidalgo; (*g*) with the message of April 13, a report of Marcy (printed in part above under the heading "Background") regarding instructions to Letcher and Conkling and their despatches concerning the abrogation of Article 11 of the Treaty of Guadalupe Hidalgo (see D.S., 7 Report Book, 39–40, 54–55, 57–62, 64, 66–67, 79–80).

On April 26 the Senate, by a decisive majority, rejected a motion to remove the injunction of secrecy from the treaty "and the documents and proceedings relating thereto" (Executive Journal, IX, 316); and a somewhat similar motion was defeated on June 29 by reference to committee (*ibid.*, 342–43).

Senate Votes on Boundary Clauses

The maps on the facing page have been prepared to illustrate certain boundary proposals submitted to vote in the Senate. The map at the top indicates the line of the signed treaty (No. 1), five of the proposed modifications thereof which were voted upon in the Senate (Nos. 2–6 inclusive), and the line of the final text of the treaty (shown by dots, except where it coincides in part with lines Nos. 5 and 6). The six smaller maps, at half the scale of the composite map at the top, bear the same serial numbers and are individually titled.

In compiling the maps, the rivers and the coast of the Gulf of California are shown as they actually were in 1854, as nearly as it has been feasible to map them in accordance with present standards of accuracy. That is, instead of utilizing maps based upon the inadequate surveys of the 1850's, the courses of the rivers and the position of the coastline are represented in their true location so far as it is expedient to determine the difference between these rivers and shorelines of 1854 and their courses as they are mapped with relatively high accuracy in 1941. The course of the Colorado River, from Yuma southward to the Gulf of California, is based upon data in Godfrey Sykes, "The Delta and Estuary of the Colorado River" (Geographical Review, XVI, 232–55, April 1926), and upon the map facing page 254. The line representing the survey by Lieutenant J. C. Ives in 1857 was selected because of the proximity of the survey date to 1854.

The Rio Grande above El Paso for about fifteen miles has been taken from a map in the records of the Supreme Court entitled "Map of the Boundary Line between New Mexico and Texas in the Valley

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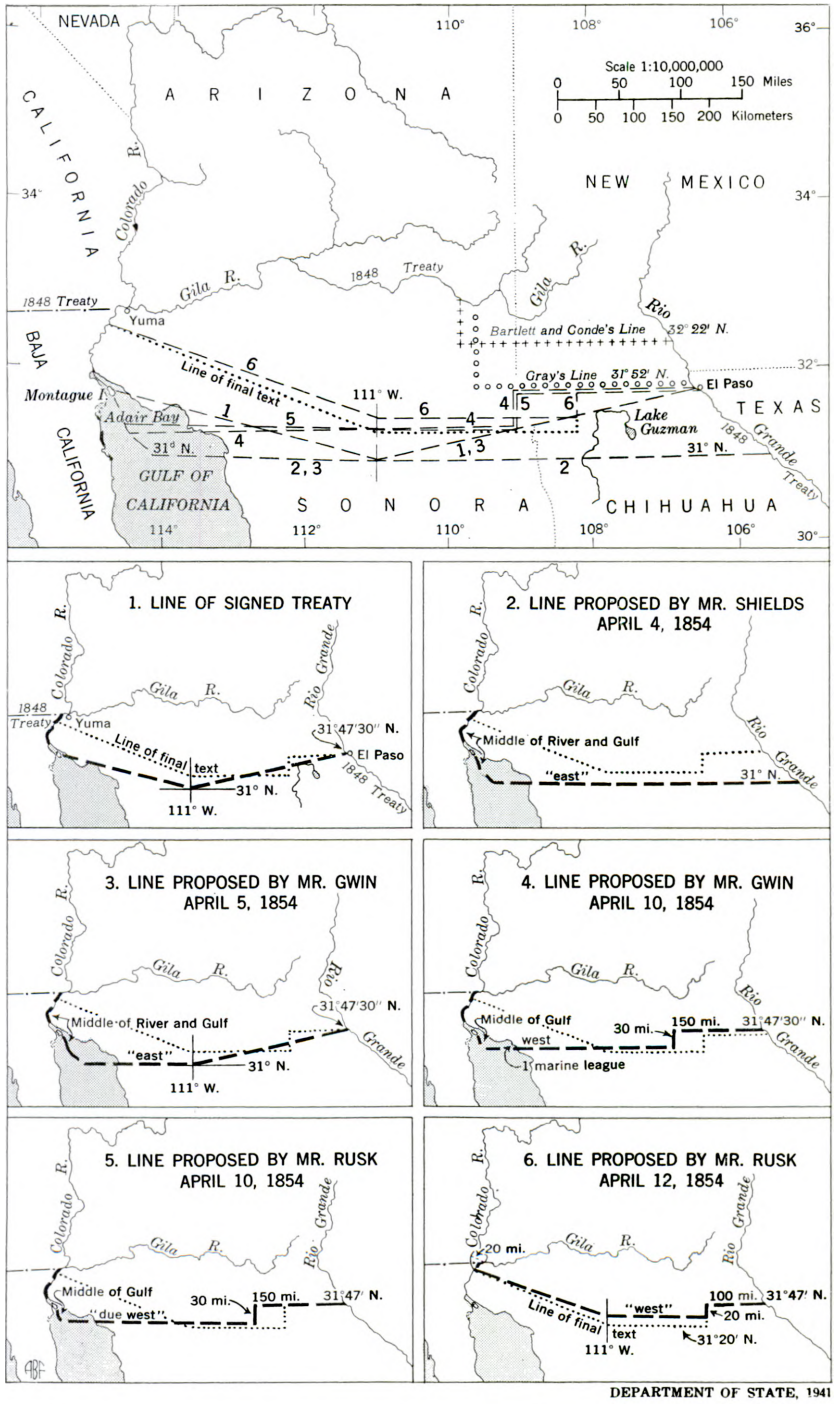

DEPARTMENT OF STATE, 1941

GADSDEN TREATY: SENATE VOTES ON BOUNDARY CLAUSES

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of the Rio Grande River from the Parallel of 32 Degrees North Latitude Southwardly to the Parallel of 31 Degrees and 47 Minutes" (Supreme Court of the United States, October Term, 1930, No. 2, original, *State of New Mexico, Complainant* v. *State of Texas, Defendant*). This map accompanied the report of the Commissioner, Samuel S. Gannett, signed July 17, 1930. The line therein defined is that designated in section V (1) of the Report of the Special Master of April 21, 1926, and accepted by the Supreme Court, except for a minor change at the northern terminus, near 32° north latitude. Gannett's survey, made in 1929–30, reestablished as nearly as possible the course of the Rio Grande as of September 9, 1850. Gannett's map is on a large scale, 1:24,000, and shows very clearly both the 1930 river course and the presumed 1850 course adopted as the New Mexico–Texas boundary. The decree of the Supreme Court of March 23, 1931, without the map, is in 283 U.S. 788.

One turning point in the line described in the Gadsden Treaty as signed, was "two marine leagues to the North of the most Northern part of the Gulf of California"; the proviso to Article 1 voted by the Senate on April 3, 1854 (33 to 2), had the effect of fixing this turning point at one marine league north of the most southern point of Montague Island as shown on the chart of December 1850. The line of the signed treaty, with the proviso, failed in the Senate on April 4 (19 to 17) and again on April 5 (22 to 16); that line is No. 1 of the maps.

Also on April 4 the proposal of Senator Shields for the line of the 31st parallel from the Gulf of California to the Rio Grande failed (21 to 20); that line is No. 2 of the maps.

No. 3 of the maps is in part line No. 1 and in part line No. 2; this proposal of Senator Gwin for the 31st parallel from the Gulf of California to the 111th meridian and thence direct to the Rio Grande at 31°47′30″ failed on April 5 (12 to 26).

Another proposal of Senator Gwin was for a line from the Rio Grande at 31°47′30″ west 150 miles, then south 30 miles, then direct to the Gulf of California at a point "one marine league south of the most southern portion of the Bay of Adair"; this proposal failed on April 10 (18 to 26). It is No. 4 of the maps; the point of this line on the Gulf of California is at approximately 31°17′30″ north (see Hydrographic Office Chart No. 1006); in 1854 that point was doubtless thought to be at approximately 31°, or about 20.1 statute miles to the south; see the position of Adair Bay on "Map of the United States and Their Territories between the Mississippi and the Pacific Ocean . . .", dated 1857–58, in Emory Report (Senate Executive Document No. 108, 34th Congress, 1st session, serial 832).

No. 5 was the proposal of Senator Rusk for a line from the Rio Grande at 31°47′ west 150 miles, then south 30 miles (being thus far almost identical with No. 4), and then west to the Gulf of California, which it would have reached at approximately 31°20′54″, or about 3.9 miles north of No. 4, the proposal of Senator Gwin (but about 24 miles north of where No. 4 was then *thought* to reach the Gulf of California), No. 5 was voted (32 to 14) on April 10, but was reconsidered two days later.

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No. 6 was voted on April 12 (30 to 13); that line was also proposed by Senator Rusk; it ran from 31°47′ on the Rio Grande west 100 miles, then south 20 miles, then west to the 111th meridian, and thence direct to the Colorado River, 20 miles below its junction with the Gila.

It is difficult to explain the Senate proceedings on lines Nos. 5 and 6; the territorial difference between them is large, nearly 10,000 square miles. But the votes on these two proposals of Rusk were quite similar; 39 of the 46 Senators recorded on April 10 voted the same way on April 12 (28 aye, 11 nay); two Senators changed from aye to nay, and two from nay to aye; three Senators voting on April 10 (two ayes and one nay) are not recorded for April 12 (cf. Garber, 124, where the larger cession of No. 5 is deemed the smaller cession of No. 6). Perhaps there was mistaken or doubtful geography; the proposal of No. 5 was very strangely worded; the line ran "due west until it reaches the Rio Colorado or Gulf of California" and "thence up the middle of the said gulf and Colorado River"; this might mean that the drafter was uncertain whether the line reached the gulf or the river; or, conceivably, he may have thought that "Rio Colorado" meant "Gulf of California"; but neither hypothesis seems plausible.

Failure on April 17 (27 to 18) of the resolution of advice and consent embodying line No. 6 and amendments to other than boundary clauses was reconsidered the next day; on April 25 the boundary definition of the final text was included (39 to 7) in the resolution of advice and consent which was adopted; that final line runs from the Rio Grande at 31°47′ west 100 miles, then south to 31°20′ and along that parallel to the 111th meridian, and thence direct to the Colorado River 20 miles below its junction with the Gila. The territorial cession of the final text measures some 3,228 square miles more than that by line No. 6.

After the Senate Amendments

The Senate resolution of advice and consent, with amendments, was adopted on April 25, 1854; the exchange of ratifications (Article 9) was to take place at Washington within six months [1] from signature, or by June 30, 1854.

The amendments proposed by the Senate were so far-reaching that it might fairly be said that their effect was the writing of a new treaty; the choice to be made by the Chief Executives of the two countries was either the text framed in the Senate or no treaty; the decision was first to be taken by President Pierce, and, if he accepted the Senate amendments, then by General Santa Anna, who was ruling without a national legislature.

It was with reluctance that Pierce concluded to accept the action of the Senate and to propose the amended treaty to the Mexican Government; his decision was made by May 6, when this instruction was sent to John S. Cripps, Secretary of Legation at Mexico City and Chargé d'Affaires ad interim, Gadsden being still in the United States (D.S., 17 Instructions, Mexico, 1–3):

[1] One of the Senate amendments enlarged the time from four months to six.

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The Treaty negotiated by General Gadsden, the Envoy Extraordinary and Minister Plenipotentiary at Mexico, was amended in several important particulars by the President before it was sent to the Senate. In that body numerous other amendments were also made.[1] You will receive a copy of the amendments made by the Senate, and also a copy of the Treaty as it now stands amended by the President and the Senate, with this communication.[2] General Almonte, the Mexican Minister here, has been furnished with the amendments, and will send them to his Government. There was much difficulty in obtaining the approval of the Instrument by the Senate in its present shape, though that body took the liberty of putting it in the form most acceptable to it. There has been much out-door opposition to the Treaty here, and it is understood that some of those who endeavored to defeat it will make efforts in Mexico to have it rejected by the Mexican Government. It is very certain—and Mexico should be assured of that fact—that nothing better for Mexico can be obtained.

General Gadsden is directed to return as soon as possible to his post, but, being in South Carolina, he will not be able to leave in the Steamer of the 14th: from New-Orleans. A government vessel will take him out as soon as possible. There is no time to be lost in bringing the matter to a close; for the ratifications are to be exchanged here by the last day of June. If the Treaty be sent to the Senate again for so immaterial an alteration as that of extending the time for the exchange of the ratification, it is believed there would be great danger of the unfavorable action of that Body.

Although to General Gadsden will be entrusted the business of getting the consent of President Santa Anna to the amendments and the ratification of the Treaty in its present shape,[3] you may be able to do good service before his arrival in preparing for a favorable result. To that end you will direct your efforts, by counteracting, as far as it may be in your power, the opposition of those who are interested in defeating it.

General Gadsden will, I have no doubt, be authorized to assure the Mexican Government that the President will ratify the Treaty as amended by the Senate and be prepared to exchange ratifications as soon as that of Mexico is received in this city. General Gadsden will, I think, be in Mexico fully empowered to act in this matter in ten or twelve days after this communication is received by you, and I hope that there will be no hesitation or delay on the part of the Mexican Government to bring this protracted negotiation to a successful close. The only question which that Government has to pass on is the acceptance or rejection of the Treaty in its present form; for any attempt to change it will, as I am persuaded, involve its defeat.

The Senate amendments were also communicated to the Mexican Minister at Washington, General Juan N. Almonte, in response to

[1] This and the preceding and succeeding sentences would seem to mean that the amendments, taken together, were those of the President plus those of the Senate; but of the four amendments to the signed treaty proposed by Pierce, two (to Articles 2 and 3) were wholly disregarded by the Senate; for Article 8 the presidential proposal was to retain the opening clauses and delete the rest; the Senate struck out the entire article; finally, Pierce proposed to change "seventy-seventh" to "seventy-eighth" in the concluding phrase of the treaty, which was done.

[2] These are almost certainly two papers in the archives of the Embassy at Mexico City misfiled following an instruction of December 8, 1853; the running text of the amended treaty, in English, which omits the unamended paragraphs of Article 1, precedes the statement of the amendments (D.S., file 026 Treaties/2150, enclosure to despatch No. 7316 from Mexico City, dated September 3, 1938).

[3] If that business had awaited the arrival of Gadsden at Mexico City, exchange of ratifications by June 30 would have been well nigh impossible. Gadsden's despatch No. 31, of June 9, 1854 (printed below), seems to have been sent by the first mail available after he reached Mexico City on June 4; and that despatch is marked as received at the Department of State on June 26.

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this request made by him on May 4 (D.S., 7 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has the honor of addressing himself to the Honorable William L. Marcy, Secretary of State, for the purpose of informing him that tomorrow night he will despatch his mail to Mexico and that he would wish to be able to communicate to his Government the status of the treaty lately concluded between this Republic and that of Mexico since it has been returned to the Executive with the amendments adopted by the Senate.

The undersigned would, therefore, be grateful to the Honorable Mr. Marcy if he will be pleased to send him a reply as soon as possible, should there be no difficulty in the way, in order that he may transmit the same, without delay, to his Government by the steamer which is about to sail from New Orleans.

With this answering note of May 5 Marcy communicated the Senate amendments, but he said nothing definite in regard to the attitude of the President toward them (D.S., 6 Notes to the Mexican Legation, 382):

The Undersigned, Secretary of State of the United States, has received the note of General Almonte, Envoy Extraordinary of Mexico, of yesterday, desiring to be informed of the actual condition of the Treaty lately concluded between this government and that of the Mexican Republic.

In reply, the Undersigned has the honor to acquaint General Almonte, that the instrument referred to has been approved by the Senate of the United States with certain amendments, a copy of which is herewith communicated.[1]

General Gadsden will, it is presumed, shortly return to Mexico with instructions as to the views of the President on the subject of the Treaty. Before his departure from the United States General Gadsden will visit Washington. Consequently, he will not be able to embark at New Orleans in the Steamer of the 14th. instant for Vera Cruz. No doubt, however, he will reach New Orleans in season to start in the succeeding one.

The text of the Senate amendments became known to the Mexican Government during the latter part of May through two channels, the Mexican Minister at Washington and the American Secretary of Legation at Mexico City; [2] and Cripps, pursuant to his instructions, urged the policy of ratification at an interview had with Bonilla (the date of the interview is not stated; the instruction to Cripps of May 6 was received at the Legation on May 14 according to the records;

[1] Perhaps by transmitting a print (or written copy) of the treaty annotated to show (but certainly for the English version only) the deletions, insertions, and other alterations.

[2] Cripps had received with the instruction of May 6 (printed above) both the text of the Senate amendments and a running copy of the "Treaty [i.e., the English version] as it now stands amended". Gadsden wrote (in his note to Bonilla of June 6, 1854, printed below) that the action of the Senate had "resulted in a project, a copy of which has been compared by the Chargé d'Affaires Mr Cripps previous to my return to this City, with that Genl Almonte, the accredited Minister from Mexico, had forwarded to the Government he represents"; that comparison must have been of English with English, which would mean that Almonte had sent to his Government the Senate amendments in English, whether with or without a translation. With the cited note of June 6 Gadsden transmitted the "project"; but some days earlier the Mexican instrument of ratification had started on its way to Washington.

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D.S., file 026 Treaties/2146, despatch No. 6884 from Mexico City, dated June 21, 1938; this was an exceptionally brief period of transmission for that time, when communication between the two capitals frequently required fifteen days or even more).

Santa Anna was constrained to yield; the Mexican instrument of ratification was signed on May 31 and was at once sent to the Legation at Washington by special messenger;[1] with it went a power to Almonte to exchange the ratifications and also, it seems, authority to enter upon "further negotiations"; but at this stage modification of the terms was impossible. In his message to the House of Representatives of June 20, 1854, Pierce wrote (Richardson, V, 241):

> I have received information that the Government of Mexico has agreed to the several amendments proposed by the Senate to the treaty between the United States and the Republic of Mexico signed on the 30th of December last, and has authorized its envoy extraordinary to this Government to exchange the ratifications thereof. The time within which the ratifications can be exchanged will expire on the 30th instant.
>
> There is a provision in the treaty for the payment by the United States to Mexico of the sum of $7,000,000 on the exchange of ratifications and the further sum of $3,000,000 when the boundaries of the ceded territory shall be settled.
>
> To be enabled to comply with the stipulation according to the terms of the treaty relative to the payments therein mentioned, it will be necessary that Congress should make an appropriation of $7,000,000 for that purpose before the 30th instant, and also the further sum of $3,000,000, to be paid when the boundaries shall be established.
>
> I therefore respectfully request that these sums may be put at the disposal of the Executive.
>
> I herewith transmit to the House of Representatives a copy of the said treaty.

Perhaps the decision of the Mexican Government was officially made known to Marcy shortly before June 20; there is this note of that date from Marcy to Almonte (D.S., 6 Notes to the Mexican Legation, 389):

> The Secretary of State presents his compliments to General Almonte, and has the honor to return herein enclosed, the copies of the Treaty, (in the English and Spanish languages,) left by him at the Department this morning.
>
> General Almonte will observe upon an examination of the English copy, that a few verbal inaccuracies have been detected upon a careful comparison of that copy with the original Treaty.[2] These errors are noted in pencil, and in correcting them it is requested that General Almonte make the corresponding alteration in the Spanish, should it be necessary.
>
> It is desirable that the copies be returned to the Department so soon as it may suit General Almonte's convenience.

It thus appears that the Spanish version of the amended treaty was first before the Department of State on June 20, 1854, and that corrections therein to conform to the exact wording of the English were left to the Mexican Minister;[3] moreover, from the following note of

[1] According to Gadsden, this courier left Veracruz by the steamer of "a week earlier" than June 14; if June 7 is exact, the messenger could hardly have started from Mexico City later than June 4 (see vol. 5, p. 339).

[2] And necessarily with the text of the Senate amendments also.

[3] General Almonte was "known to be a complete master of the English language" (Sir Edward Thornton, quoted in Moore, International Arbitrations, III, 2447).

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Almonte of June 21 it is also clear that the United States instrument of ratification, embodying the text in both languages, was then about to be written (D.S., 7 Notes from the Mexican Legation):

> General Almonte presents his compliments to the hon: Mr Marcy, Secretary of State, and has the honor to send back herein enclosed the Copies of the treaty in both languages, corrected according to Mr Marcy's wishes.
> General Almonte desires to have the said Copies returned to him after its contents have been transfered to the treaty which is to be exchanged on the part of the government of the U. States for that which has been intrusted to Genl Almonte by his government.

By Article 3 the sum of $7,000,000 was to be paid "in the city of New York" to the Government of Mexico by the Government of the United States "immediately upon the exchange of the ratifications of this treaty". The necessary appropriation by Congress was thus a condition precedent to the exchange. The presidential message of June 20 to the House of Representatives (printed above) was laid before that body on June 21 and was referred to the Committee on Ways and Means; on June 22 the committee reported a bill; on Monday, June 26, general debate [1] began and was continued the next day; on June 28, after debate under the five-minute rule, the bill passed by 103 to 62; in the Senate the vote on June 29 was 34 to 6 (see Congressional Globe, 33d Congress, 1st session, 1466, 1476, 1519–24, 1535–49, 1561–65, 1568, and appendix, 1008–68, *passim*); on that day the bill became law (10 Statutes at Large, 301) and the treaty was ratified by the United States. Almonte wrote formally that he had received the Mexican instrument of ratification and was "fully authorized to proceed to the exchange of ratifications", requesting Marcy to "designate the day and hour" (D.S., 7 Notes from the Mexican Legation, translation; Manning, *op. cit.*, IX, 718–19, June 29, 1854); Marcy answered, making the appointment for noon of June 30 (D.S., 6 Notes to the Mexican Legation, 390–91; Manning, *op. cit.*, IX, 166); and then, just six months from the signing of the treaty, the ratifications were exchanged and the proclamation issued.

When Gadsden left Charleston on May 21, 1854, to return to his post (see Manning, *op. cit.*, IX, 707–8), he had this instruction of May 11 regarding ratification of the treaty (D.S., 17 Instructions, Mexico, 4–6):

> With this communication you will receive a copy of the amendments made to the Treaty concluded by you with Mexico on the 30th. of December, last. You

[1] During this debate various critics spoke of the treaty as if it had been completed and was in force; it was also contended that the "negotiating and concluding" of the treaty was a "breach of the privileges of the House" and that the "pretensions" of the presidential message were "that the payment of these ten millions is obligatory upon the House; that the supremacy of the treaty-making power deprives the Congress of a right of refusal, and exacts the money from them". All this was peculiarly inept; in this case Congress was consulted in advance; there was no international obligation of the United States in existence until after the enactment of June 29, 1854; if the appropriation had not been voted, the ratifications of the treaty could not have been exchanged and the treaty would have failed to enter into force.

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will submit the amendments to the Mexican Government, at as early a period as practicable, for its approval or rejection. You will be able to assure it from what you have learned here that there is no hope of obtaining further amendments or a different treaty, should this be rejected.

Considering the magnitude of our difficulties with that country, as the means of removing those of a threatening character the President has come to the determination to ratify the Treaty as amended, if it should be approved and ratified by the Mexican Government. I trust you will be able to satisfy Mexico that the sum stipulated to be paid is liberal considering the concessions and grants she thereby makes. Such is certainly the view of this government. There was a vigorous opposition in the Senate to the treaty in its present shape, and the appropriation of the sum required to comply with the stipulations will probably encounter considerable opposition in the House, yet there are good reasons to believe the President will be furnished with the means of carrying it out.

Should Mexico propose to make any alterations, or delay in giving her approval to the amendments, all ideas of any treaty arrangement must be abandoned, for the present at least. I am satisfied that the Treaty as it is would be endangered if it were to be sent again to the Senate for any immaterial change. You will urge upon the Mexican government to take it as amended by the Senate.

It will be useless for you to continue negotiations with a view to any further modifications, for there is no ground to hope that one essentially different in character could receive the approval of the Senate, even should the President be disposed to send such a one to that body.

If at the time when the Mexican Government ratifies the Treaty, there should not be a reasonable probability of its ratification reaching here in season, the ratification might itself contain a clause extending the time for the exchange. It is possible that the Senate might consent to such an extension.

Gadsden had no influence on the making of the decision of the Mexican Government to accept the amended treaty, as he arrived in Mexico City on the evening of Sunday, June 4, when the messenger taking the instructions to Almonte had almost certainly left; of that fact Gadsden was at first unaware; so at an interview with Bonilla, by note to him, and at a conference with Santa Anna, Gadsden argued as best he could for ratification of the treaty; learning then of the instructions already forwarded to Almonte, he reported by this despatch of June 9, which, it seems, was sent by messenger to Veracruz on the day of its date, so as to catch the steamer of June 14 for New Orleans [1] (D.S., 18 Despatches, Mexico, No. 31):

I arrived at the City of Mexico on the evening of the 4th instant; and in an interview on the subsequent day, presented to the Minister of Foreign Relations, the considerations which would alone influence the President of the U. States to accept of the Treaty made with this Republic as amended by the Senate— Mr Cripps the Chargé d'Affaires ad interim; on the receipt of a communication from the State Department of an earlier date; had sought a conferrence with that Minister, and had fully explained and impressed through His Excellency on the Mexican Government, the policy of accepting and ratifying the Treaty as modified; before the limitation for that purpose, fixed by the Senate, should expire— At each of these interviews, and at one subsequently had with the President of Mexico direct; did his Excellency and Minister, express their unqualified dissent to an Instrument which was deficient in all the higher binding requisites of international agreements;—which was not reciprocal; but onerous and offensive to the weaker party, in all its provisions—which did not adjust the issues between the two Republics so as to promise harmony of relations in the future; which would reopen many of a most threatening character; and which as involving

[1] The despatch is endorsed as received on June 26, when the exchange of ratifications at Washington was awaiting only the enactment of the necessary appropriations.

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private claims and demands, were always most difficult to arrange; and which was particularly exceptionable in the eighth (8) article; as asserting under certain contingences; the right of protection of a private interest and speculation, and on conditions which seem to involve the surrender of nationality in the right of eminent domain; not only to the U States, but to every other nation which under Treaty with Mexico, might claim what was granted to the most favored— While it was difficult to rebut, on my part; all these acknowledged and perplexing truths; I felt deprived, of both the will or ability, to urge any considerations in favor or Justification of an Instrument of assumed agreement: which in its inequality and want of reciprocation; was so repugnant to one of the parties who had yet to accord its assent; and which was obnoxious to all the objections urged by High Functionaries: who as charged with the protection of the interests and integrity of Mexico, were now held to a fearful responsibility by a threatened internal commotion; the issue of which no sagacity at this crisis can foreshadow— There was nothing remaining therefore for this Legation; in upholding the policy and institutions of the U States on all occasions inculcating in its relations with Foreign Governments and particularly with the weaker—The most commendable attribute of *Power: Magnanimity:*—than to explain the facts, and to present the considerations as contained in the correspondence with the Department of State at Washington for an acquiescence on the part of Mexico in the conditions of a proffered agreement; however unacceptable, without hazarding this probable last immediate opportunity, of reconciling in part the existing difficulties between the Two Countries— At the close of our conferences I was advised by Mr Bonilla Minister of Foreign Relations that not anticipating my arrival at Mexico in time for any arrangements on the Treaty as amended; and unadvised as to what instructions I might bring; full powers through a Special Messenger; had been forwarded to Genl Almonte to act in the premises— That the presence of that Minister near the Government at Washington; and the opportunities he would enjoy of free and frank conferences with the President and his most influencial Advisers in the Senate: on modifications to be obtained in the terms of the Treaty more acceptable to Mexico; before the period fixed for its ratification should expire, had influenced the Mexican Government in the direction thus given to further negotiations— According with these views, as probably best calculated, within the time limited; to bring the relations of the Two Governments in harmony—I deferred for the present any further proceedings under the commission with which charged— You have herewith embodied in writing a condensed Sumary of the conferences with the President of the Republic and the Minister of Foreign Relations marked (f) with the response (f) from His Excellency the Minister confirming the statement in this communication—

With the foregoing despatch Gadsden transmitted his correspondence on ratification with the Mexican Minister of Foreign Affairs; it is to be borne in mind that this note of June 6 was written by Gadsden before he had been informed of the instructions previously sent to Almonte at Washington (*ibid.*, enclosure):

The Undersigned Envoy and Minister of the United States in resuming his official relations as such, has the honor to submit to His Excellency Don Manuel Diez de Bonilla, Minister of Foreign Relations for the consideration of the Government of Mexico, the project of a Treaty which has in some of its provisions, been substituted by the Senate of the U States for the Treaty which was concluded in Mexico on the 30th of December past— This last Instrument His Excellency is well advised, received the approbation of the President of the U States and was submitted to the Senate for their advice and concurrence— The unexpected dissent however of a portion of that Body to some of its provisions has resulted in a project, a copy of which has been compared by the Chargé d'Affaires Mr Cripps previous to my return to this City, with that Genl Almonte, the accredeted Minister from Mexico, had forwarded to the Government he represents— The President of the U States though greatly disappointed, that his constitutional advisers could not accord their necessary concurrent approbation

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to an Instrument of agreement which promised a happy reconciliation of all the disturbing issues between the Two Neighboring Republics; Yet in consideration of the magnitude of those difficulties; and as the only immediate means of removing in part, those of most threatning character, has come to the determination, to accord his assent to the Treaty as amended, if it should be approved and ratified by the Mexican Government— The Undersigned does not deem it important here to repeat, the substance of a brief conversation had with his Excellency on the 4th instant[1] or to refer to a conference with Mr Cripps of an earlier date, impressing on the Mexican Government the considerations which will induce the President of the U States to accept the Treaty as amended by the Senate— The views as conveyed in the conferences referred to, The Undersigned trusts have been so favorably entertained by His Excellency as to recommend a prompt ratification, of the Treaty, as now presented as a ratification on the part of Mexico, is alone necessary to make that Instrument the Supreme Law of the Two Republics— Any delay in according this assent or any attempt to submit alterations probably more reciprocal or more acceptable to Mexico, would most assuredly endanger the Treaty, if it were to be sent again to the Senate of the U States— There would be a want of candor therefore on the part of the Undersigned to give any assurance to the Mexican Government that any further modifications in the Treaty as now submitted for acceptance, could possibly be obtained, for there is no ground to hope that one essentially different in character could receive the approval of the Senate, should the President be disposed to submit such a one to the consideration of that Body— The Undersigned therefore expresses the hope that Mexico will yield a willing acquiescence to the provisions of the Treaty as now submitted for its ratification, and not forfeit the last immediate opportunity of reconciling existing disagreements and of restoring those relations of peace and amity which it is the interest of the two Neighboring Republics to perfect and perpetuate— His Excellency will recognize in the limit as to time placed on the ratification of this Treaty; the necessity of an early response to this communication; as the Undersigned is desirous to forward the same by a special Messenger from this City to leave on Friday Morning[2]—

The answer of Bonilla (*ibid.*, enclosure, June 8, 1854) to Gadsden's note of June 6 was to the effect that before the arrival of Gadsden at the capital appropriate instructions[3] had been sent by the Minister of Foreign Affairs to General Almonte, since he was more directly in touch with the Government of the United States ("como mas inmediato al Gobierno de Washington").

From Gadsden's next despatch (not received at Washington until July 1, after proclamation of the treaty) these blunt passages, wherein he placed on record his disapproval of the Senate amendments, are excerpted (*ibid.*, No. 32, June 17, 1854; in full in Manning, *op. cit.*, IX, 715–18):

The Fulton most probably left Vera Cruz on the 14th instant, which will have afforded ample time for the despatches from this Legation to reach Washington for any further action by the President on the Treaty, as amended by the Senate[4]— The Special and confidential Messenger returned by the Mexican Government to its Minister near that of the United States; left in the Mail Steamer for New Orleans a week earlier— The instructions conveyed by him to Genl Almonte: are ample and complete; to meet every contingency connected with the final acceptance and ratification of the Treaty as modified in the Senate; if amendments more Just and favorable to Mexico, in some of the exceptionable

[1] More likely on June 5, as stated in Gadsden's covering despatch.
[2] June 9, 1854.
[3] The full power to Almonte to effect the exchange, which is printed above, was dated January 3, 1854, only four days after signature of the treaty.
[4] Gadsden's despatch of June 9 was received at Washington on June 26.

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provisions, cannot be obtained— A great derangement has been committed in the Boundary as altered by the Senate— While the changes do not remove materially the objection; to any acquisition of additional Territory (the difference not exceeding 2,500,000 acres of land)[1] it substitutes unintelligible lines of demarkation; with all the imperfections, as to frontier, protection; and with most of the impediments to an approved and practicable Thoroughfare within the limits of the U States for Travel and emigration from the Atlantic, to our possessions on the Pacific— These deficiences in the Territorial limits, as defined by the Treaty of Guadalupe, and subsequently restricted by the Commissioner charged with the Survey and the establishing of them, originated many of the Border disturbances in the past, which had to be quieted: and must be a future source of frequent, and unpleasant difficulties between the Citizens and Authorities of the adjacent Countries— The ambiguity likewise as to where the line is to intercept the Colorado—and the discarding the advantages of a place of deposit at or near its mouth; must render nugatory, and of no avail the grant for the *free* and *mutual navigation* of that *River*— Whenever therefore that privilege begins to be appreciated by those forming *Settlements* in Utah, New Mexico: and the country intersected by: and attracting emigration to the Colorado and Gila; new issues must arise which will prove additional stimuli to future Fillibustering enterprizes; or will have to be arranged by Treaty, and on conditions not probably as favorable as those, which have been rejected; and which had secured the benefits of an unrestricted and untaxed outlet for our citizens to the Gulf of California and the Western ocean— The substituted Treaty however is most exposed to objections as reopening many of the National issues which the compact, which it supercedes, had settled; and in its want of *equality* and *reciprocity* in most of the provisions which are the only reliable Bonds of respect for International agreements— The weaker party imposed on; or forced without consultation to acquiesce in conditions offensive and humiliating; will not recognize the obligations to observe or regard them—when change of circumstances would authorize and Justify repudiation— The free Institutions of the U States; and the progress of their respective Governments in Civil and Religious liberty; can promote harmony of Federal relations abroad; by the same example alone, which preserves it among different Sovereignities, under a common bond, at home— Assumed National Supremacy and abuse of power acquired through a free and enlightened commercial policy, is as obnoxious to our admirably poised Government which seeks similar harmony of associations with foreign powers; as could be centralization of usurped perogatives at Washington to overawe the Independent Sovereignities of our domestic political household— Having been influenced by these views in the negotiations conducted through high official responsibilities with Mexico. I feel it due on this occasion to myself: and to the character of the Government I represent, to record my dissent to the exclusion and changes made by that Honorable Body in the provisions of a Treaty under adverse and opposing influences, which are well designed to impair the relations which it is the policy and interest of the United States to preserve with her nearest neighbour— This Legation has already since my return been much pressed and importuned by American Citizens claiming indemnity from Mexico for wrongs inflicted— As these cases were numerous on the docket, had been urged by Predecessors on the consideration and Justice of the Mexican Government; and provision made in the late Treaty for their examination and adjudication by a *Competent Tribunal.* I shall defer, for the special instructions of the State Department; any further notice or essay to protect them—

For further comments of Gadsden (January 5, 1855), see Manning, *op. cit.*, IX, 739–40.

In an instruction of October 13, 1854, Marcy thus commented on Gadsden's statements in the quoted despatches (Nos. 31 and 32) of June 9 and 17 (D.S., 17 Instructions, Mexico, 20–25, excerpt; in full in Manning, *op. cit.*, IX, 167–69):

[1] The difference is about 7,218,350 acres.

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The unusual pressure of business upon the Department near the close of the Session of Congress, and other important matters claiming my immediate attention, since its adjournment, have delayed my reply to several of your despatches.

I do not propose to discuss the relative merits of the Treaty with Mexico in the form it was negotiated by you, and in that which was afterwards given to it; but I cannot pass without notice some of the objections presented by Mexico to the Treaty, not merely because she had raised them, but because you express your full acquiescence in them.

In some of your remarks I entirely concur, but to others, I feel bound to express my dissent. In regard to the points to which the latter refer, I hope that upon further reflection, you will see cause to modify your views.

I regret, as sincerely as you do, that the Treaty does not contain a provision for the adjustment and satisfaction of the claims of our citizens against Mexico. Such a provision was due to the claimants, and it would have relieved the Legation and this Department from most difficult and embarrassing duties.

I am not disposed to question the accuracy of your views in regard to the boundary line, but rather to concur with you in the opinion that the line agreed upon by the negotiators is preferable to that arranged by the Senate. But there are other objections urged against the Treaty with which I cannot agree, and still less can I assent to the startling inference from them, that "any change of circumstances would authorize and justify repudiation" of it by Mexico. Among the objections urged by Mexico against the Treaty are the following:—

First, that "it is deficient in all the higher and binding requisites of international agreements"—"not reciprocal, but onerous and offensive to the weaker party in all its provisions."

Second, its want of *equality* and *reciprocity* in most of its provisions:—

Third, "that it is particularly exceptionable in the 8th Article."

Not being able to perceive that these, as well as some other objections to the Treaty urged by the President of Mexico and his Minister of Foreign Relations, were well founded, I could not but regret that they have made so strong an impression on your mind as they appear to have done, and that you "felt deprived of both the will and ability to urge any considerations in favor or justification" of it.

It would certainly have a very injurious effect upon our relations with Mexico, and diminish the chances of having justice done to our citizens who have a large amount of well founded claims against that country, if these high functionaries should become impressed with the opinion that this Government entertained views in regard to the Treaty similar to yours, as expressed in your despatches Nos 31 and 32.

There is not, according to my best judgment, "a want of *equality* or *reciprocity* in most of the provisions" of the Treaty; nor in making it was Mexico "imposed on, or forced without consultation to acquiesce in conditions offensive and humiliating." All the circumstances considered, I regard it an advantageous contract for the Government of Mexico. The United States paid a liberal consideration for the grants and concessions they obtained. I confess that I am at a loss to conceive what there is in the transaction to sustain the allegation just quoted. Mexico was as free to accept or reject the amended Treaty as that which you negotiated with her.

It surprises me that Mexico should have thought of raising any objections to the 8th. Article. It could not have occurred to the President of Mexico, or to his Minister of Foreign Relations, when they suggested such an objection to you, that a Convention had been made by the Mexican Government with your immediate predecessor in regard to the very objects embraced in that Article. That Convention was obnoxious, not only to every objection which can be urged against the 8th Article, but to objections still stronger; yet Mexico was exceedingly anxious to procure the concurrence of the Government of the United States in that instrument. Her Minister here called on me several times and urged the adoption of that Convention. Under these circumstances I cannot but regard the objections to the 8th Article as captious on the part of Mexico.

Though the Treaty does not embrace all the objects this Government or that of Mexico desired to adjust, it is not less obligatory on both parties on that account, in regard to such objects as are included in its stipulations.

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Although you have felt it to be your duty to record your "dissent to the exclusion and changes made by that honorable body [the Senate][1] in the provisions of the Treaty," negotiated by you, the President is confident that your individual views in this respect will not abate your zeal or efforts in urging upon Mexico the scrupulous fulfillment of the obligations imposed by it in its present form.

As the Treaty has made no provision for the satisfaction of the claims of our citizens upon Mexico, her obligation to adjust and pay them exists in the same force it did before it was concluded; and it is expected that you will urge the Mexican Government to adjust such of them as are of a character to justify the interposition of the Executive authority of the United States. This Department has, heretofore, indicated to you, or to your predecessors, such as were deemed proper to receive the attention of the Legation. These you will earnestly press upon the attention of the Government of Mexico. You will, as new cases arise receive further instructions in regard to them.

The Negotiations

James Gadsden, of South Carolina, was appointed Minister to Mexico on May 24, 1853 (this was a recess appointment; his second commission, after confirmation by the Senate, was of February 13, 1854). The first instructions of Secretary of State Marcy to Gadsden, then at Charleston, regarding negotiations with Mexico, were dated July 15, 1853 (D.S., 16 Instructions, Mexico, 389–413); while lengthy, they were not on all points definitive; their text follows:

The relations between the United States and Mexico are in an unsettled state. There are several questions now pending between the two countries of grave importance and conceded difficulty; and it is apprehended that you will find the government and people of Mexico not favorably disposed to a fair adjustment of them. The hostile feelings engendered by the late war with Mexico imbittered by the severe wounds inflicted on her national pride have not wholly subsided; and it is feared that the degree of irritation yet remaining will embarrass our negotiations with her. It is the earnest wish of this government to cultivate friendly relations with that Republic, and you are requested to impress this sentiment upon the government and people of that Country in the most effective way; and, if it be possible, to inspire them with a reciprocal feeling towards the United States.

The President is determined, in treating the questions of difference with her, to take a liberal course. While insisting upon our own rights he will be careful to respect the rights of Mexico. When our fair intentions towards her, and our sincere desire for amicable relations and a free commercial intercourse are manifested, it is hoped that all existing prejudices on the part of Mexico will give way; and that you will be enabled to accomplish the objects of your mission in a manner beneficial alike to both countries.

During the last administration, this Government interested itself in behalf of the assignees of a grant made by Mexico of the right of way from the Atlantic to the Pacific across the Isthmus of Tehuantepec. The privileges of the original grantee had passed by assignment to citizens of the United States. A deep interest was felt by our people generally in the object of this grant, and our government interposed to give it effect. It has urged Mexico to respect the rights of the present proprietors of the Grant;—but she has denied the validity of that grant, and by a formal decree of her legislature declared it null and void. There is in the archives of the Legation an extensive correspondence on the subject, which will enable you, should it come up for your consideration, to understand the condition of that question. It is not proposed to instruct you at this time to resume this negotiation. Should the President hereafter conclude to do so, his views will be fully made known to you.

Within a few months past the Mexican government has made another grant[2]

[1] The brackets are in the source paper.

[2] The Sloo Grant.

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of the right of way through the same route. The latter grant is in direct conflict with the former one, to Garay. Our Minister at Mexico, your immediate predecessor, without instructions from his government entered into a convention[1] guarantying protection to the latter grant, and has transmitted it hither for the purpose of ratification. Any favorable action by the President on this convention would seem to imply an abandonment on his part of any further attempt to induce Mexico to respect the rights of the assignees under the Garay contract. You are not authorized, therefore, to give any assurance to Mexico that this convention will be approved by this government. The President is not yet prepared to announce the course he may deem it his duty to take in regard to the Garay grant or the proposed convention for the guaranty of the one recently made.

I will now direct your attention to a very serious difficulty which has arisen in relation to the boundary line between the United States and Mexico. The part of the line, in regard to which the dispute has arisen, is that along the southern boundary of New Mexico. The first question to be settled is, whether this line has been actually traced by the boundary commission according to the provisions of the Treaty of Guadalupe Hidalgo of the 2nd of February, '48. The mode of running and marking the line between the United States and Mexico is clearly prescribed by the 5th. Article of that Treaty. That article provides a commission for that purpose. Each government is required "to appoint a commissioner and "a surveyor, who shall meet at the port of San Diego, and proceed to run and "mark the said boundary in its whole course to the mouth of the Rio Bravo del "Norte. They shall keep Journals and make out plans of their operations; and "the result agreed upon by them shall be deemed a part of this treaty."

The language I have quoted clearly requires that, not only the commissioners appointed by the two governments, but the surveyors also, must concur in the result before the line run and marked will become a part of the Treaty—that is—the fixed boundary between the two countries. They *all* must agree in the result. The Commissioner and Surveyor appointed by each government are its agents, and are to act in this business, in conjunction with the Commissioner and Surveyor of the other, and their determination all agreeing, is necessary to establish the boundary line, and nothing less can do it. This was not a board which could decide any thing by a majority of votes. Two could conclude nothing when three only were present, nor could three concurring in opinion, do a valid act in the absence or without the concurrence of the fourth. This was evidently the view of the matter taken not only by the American Commissioner, but by the Mexican Commissioner and Surveyor, at the time this part of the line was under consideration. Hence the great anxiety to have the American Surveyor concur in their opinion in regard to the initial point. The fixing of that point has never been concurred in by the American Surveyor. Mr. Gray who held that position was not present when the initial point was attempted to be fixed, and as soon as he was informed of what was proposed with respect to it, he declared his dissent, and clearly exposed the error. Lieutenant Whipple who, until the arrival of Mr. Gray, acted as Surveyor under a void appointment from the American Commissioner, also thought it was a mistake to fix that point at 32°22′, but his concurrence, had it been given in the most formal manner, could be of no avail for he was not a Surveyor. Mr. Bartlett, the American Commissioner had no authority, nor the colour of an authority, to appoint a surveyor, and this was well understood at the time by the Mexican Commissioner and Surveyor. As to the mode of appointing these agents to trace and mark the boundary line the Treaty is clear and explicit. "The two governments shall "each appoint a commissioner and a surveyor" &c. The government of the United States had nothing to do with designating Lieutenant Whipple. Mr. Gray the first appointed surveyor on the part of the United States was the incumbent of that office when Lieutenant Whipple was designated to act as Surveyor—but if it had been vacant Mr. Bartlett had no power to fill it. Mr. Gray was superseded by Colonel Graham. No sooner did Colonel Graham look into this matter than he discovered the error in regarding 32°22′ as the true initial point on the Rio Bravo del Norte, and not only refused to give his sanction to it, but showed conclusively that it would be a palpable mistake to fix it there.

[1] Of March 21, 1853 (D.S., Unperfected J2).

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He was subsequently removed and Major Emory put in his place as American Surveyor, but Major Emory never concurred in fixing the initial point, at the place selected by the two Commissioners and the Mexican Surveyor. He afterwards merely certified the fact that the Commissioners had fixed the initial point at 32°22′. An attempt has been made, and may be repeated, to pervert this certificate into a distinctive act of approval, but it was not so regarded by Major Emory nor can it justly be so regarded by any one.

I have gone into this detail of the proceedings in regard to the initial point to show that it has not yet been fixed, according to the requirements of the Treaty, and notwithstanding all that has been done in that matter, the United States can fairly consider the Southern line along the Territory of New Mexico yet unestablished. I hope you will find the government of Mexico disposed to acquiesce in this view of the subject.

I apprehend that Mexico may be the more tenacious in holding on to the erroneous line in consequence of the opinions and action of the late Secretaries of the Interior and of the State departments on this subject. They both appear to have approved of the course of our Commissioner—or at least to have been disposed to acquiesce in his decision and to regard it as obligatory upon the United States.

It is quite natural that Mexico should attach more importance to the acts and opinions of these members of the late administration than can be properly ascribed to them in a matter of this kind. By recurring to the treaty, it will be perceived that the Executive department of the respective governments had no control over the conduct of the Commissioner and Surveyor appointed by them, nor was there reserved to either the duty or the right to approve of their proceedings, and no approval or sanction by either or both is required to give them validity. The boundary commission was placed beyond the power of either Mexico or the United States, while acting in good faith in the matter committed to them by the Treaty. Their decisions, when made conformably thereto, were valid and effective to bind the two governments without the approval of the executive department of either, and, when not in conformity to the Treaty, such approval could give them no validity. Whatever may have been the opinion of the Secretary of the Interior or any other Secretary, or of even the President, upon the acts of the American Commissioner, those acts are not now the less open to question as to their binding effect on the United States. Such approval no more corrects an error, if error there be, than a like Executive approval would correct an error committed by any judicial tribunal of the United States. If indeed there had been an explicit approval by the late executive officers of the decision of the American Commissioner on the initial point, inasmuch as that decision was not made by competent authority and was not a matter at all depending upon executive sanction, the President is in no way released from his duty of seeing that the boundary line has been run and marked by those who were selected for that purpose, and he canot without disregarding that duty, acquiesce in a line which has not been thus established.

However desirable it may be to Mexico to have the line she now claims recognized, I think she will not contend that a line which has not in fact been run and marked by the Commissioners and Surveyors of each government is to be regarded as established according to the requirements of the treaty. You will therefore urge upon Mexico as the view of this government that the line along the Southern boundary has not been established in the way required by the treaty and obtain her consent, if it can be done, to have it thus run and marked.

That the line claimed by Mexico has not been run and marked in the only manner it could have been run and marked, according to the Treaty, is very clear, and it is equally clear that in tracing it the provisions of the treaty have been strangely disregarded. Instead of giving the whole of New Mexico to the United States as was the obvious intention of the negotiators of the Treaty, and as is clearly expressed by the language they used, a large district of that Territory is cut off by the Commissioners' line. Their line is thirty-four miles too far north, and, by regarding it as the true line, a district of country of that width along the whole southern extent of New Mexico would be lost to the United States. If the boundary commission had established, in the manner prescribed by the Treaty, a line so variant from the one intended by the parties it can hardly be supposed

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that the party which had thus obtained an accidental advantage would insist upon holding on to it; but the question is not presented in that aspect, for the line in question, as I have shown, has not been run and marked in the mode required by the Treaty.

It will appear by an examination of the 5th: Article that the true initial point is only a few miles (probably about eight) north of the Town of El Paso—that the error (hardly excusable) has occurred by disregarding the Map referred to in, and made a part of the treaty, and substituting for it the figures on its margin—placed there to indicate the parallels of latitude.

I do not propose in this communication to reproduce the arguments which have been put forth by the American Surveyors and in the Senate of the United States, showing, as I think they do, conclusively, the error of the commissioners, nor shall I on the other hand discuss those which have been adduced to sustain the line claimed by Mexico. You will be furnished with them; and should it become necessary for you to present to Mexico, the views of your government on this point, you will have ample means in your possession to sustain them. The treaty furnishes a basis of an argument—indeed it is in itself an irrefragable argument for the line claimed by the United States. Mexico ought to be willing, as the United States are, to have the line run and marked in the mode designated in the treaty and to acquiesce in the result. Until it is thus run and marked she ought not to expect acquiescence on the part of this government, in that which she now claims upon no better ground than a mistake, and which if allowed would sever from New Mexico a large district of country which was a part of it when the treaty of Peace and Limits was made, and has ever belonged to it.

While this dispute as to the southern boundary of New Mexico remains unadjusted it is expected that each party will abstain from taking possession of the district in question or doing any act which indicates an exclusive appropriation thereof to itself. The late Governor of New Mexico it seems entertained an intention of taking actual possession of it and so announced his purpose in a proclamation; but at the same time he declared that he was acting in the matter without instructions from his government. His intention was never executed, his purpose was disapproved, and Mexico has been distincly apprised that the United States will abstain from taking possession of the disputed territory in the belief that the difficulty will be settled by negotiation, and this government expects that Mexico will on her part take the same course. Should she however contrary to our reasonable expectation have acted otherwise you will urge upon her the propriety and reasonableness of the proposition of this government, and insist upon her acting in conformity to it. Our proposition is that the district in question should be left precisely in the situation it was when the dispute first arose until all efforts to adjust it shall have been exhausted. I cannot doubt that Mexico will conform to this suggestion.

I will now direct your attention to the second paragraph of the 6th. article of the Treaty of Guadalupe Hidalgo with a view to a subject which is deemed of great importance to both countries. By that clause in the Treaty you will perceive that either party wishing to construct a canal or rail-road along the Gila River may, under an agreement, use for that purpose the bank on either side of that River to the extent of a marine league. It was contemplated that a canal or rail-road should be constructed near this boundary and neither government can be unapprised of the vast importance to both of such a work. A canal from the Rio Grande to the Pacific through that route is now considered impracticable. A better knowledge of the country in the vicinity of the Gila has demonstrated the great difficulty,—not to say, impossibility—of constructing a rail-road along its banks or within the space on either side mentioned in the Treaty; yet a very eligible route for such a road is found at a further distance than a marine league on the Mexican side of the line but not on the American side of it.

In view of the many advantages Mexico would derive from such a road it is presumed she would readily accept of a proposition to alter the boundary on that part of the line and cede to the United States such a strip of country as may be necessary to bring within our territory a feasible route for such a rail-road. It is difficult to tell, without an actual survey, the extent of the alteration required for such a purpose. It would be important particularly to the interests of Mexico that such a rail-road should connect with the navigable waters of the Gulf of

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California. For this purpose it is desirable that the true line—as we contend—the line commencing on the Rio Grande a few miles north of El Paso—should be continued for a considerable distance west beyond the treaty line, then run South about 30′ and then again west to that Gulf. Should Mexico be unwilling to make so large a cession of country as such a line would require she might agree to have the line on the Southern border of New Mexico continued until it shall strike the River San Pedro and thence down that river to its junction with the Gila. It is believed that if the United States could acquire this latter line they would then have within their territory a good route for a rail-road.

If you should find a disposition on the part of Mexico to treat for either of these lines or indeed any other, in order to give the United States a practicable route for a rail-road, no time will be lost in getting such information of the Country as to make it sure that the United States shall accomplish the sole object they have in desiring a change in the treaty line on this frontier—an eligible route for a rail-road.

Not knowing what extent of country would be required I cannot inform you at this time what consideration this government would offer for such a cession. The country which would, by such a change of line, fall within our limits, is not as I understand much settled nor is it at all inviting to settlers; it is therefore presumed that it may be acquired for a moderate sum. You will, at as early a period as practicable, embrace a fair occasion to bring this matter to the consideration of the Mexican Government, and should you find that it can be induced to treat on this subject you will notify this department.

Herewith you will be furnished with a copy of a map [1] made by A. B. Gray, Esquire, the American Surveyor of the Boundary Commission, as it was first organized. By this map you will be able to designate with some degree of accuracy the section of country which is desired for facilitating the construction of the Rail-road to the Pacific.

The suggestion for increasing our territory in the way proposed for a special object—and that object one in which Mexico is deeply interested, and one too contemplated by the Treaty of Peace and Limits with her,—will not I trust be misinterpreted, and cannot therefore wound her national pride. She ought not to suspect any sinister design on our part for she must know that such a road will be a very expensive work which our government would not patronize, nor our citizens embark their capital in to the amount of many millions, if in any part of the way it were to run through a foreign territory.

Should you find Mexico disposed to treat for a new line you are instructed not to press a discussion of our claim—after having clearly stated it—for the disputed territory. It is probably the expedient way of disposing of that question to let it be merged in the negotiation for an alteration of the boundary. With this negotiation for a change of the line it may also be proper to embrace the settlement of the claims of our citizens against Mexico and the pretended claims of her citizens against the United States arising under the 11th: Article of the Treaty of Guadalupe Hidalgo. In these general instructions it is not proposed to give you the views of the government of the United States upon any of these respective claims. You will find much in the archives of the Legation at Mexico in relation to them. In the instructions to your immediate predecessor you will find the position laid down—and I am inclined to think correctly laid down—that neither Mexico nor any of her citizens have really any claim upon this government for not having fulfilled the obligations imposed upon it by the 11th. Article of that treaty, and yet previous to that time and also in those very instructions our minister was authorized to offer several millions for a release from the obligations imposed on this government by that article and to quiet the claims under it. The government of Mexico seems to have considered the stipulation on the part of the United States an absolute engagement on our part to restrain all Indian incursions into its Territory—and when they do take place, to pay all damage resulting from them—but there is as you will perceive by that article a very important qualification to the undertaking by this govt. The United States are only to restrain these incursions "in the same way, and

[1] This map, not now available, was sent to Gadsden with an instruction of the next day, which is cited below.

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with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its own citizens." This government has, as it can show, used the diligence and energy promised towards the accomplishment of the objects specified, and thus discharged its obligations to Mexico in this respect. Since the treaty with Mexico of the 2nd of February 1848, a considerable part of our military force has been stationed along the Mexican frontier, and almost exclusively employed in keeping the Indians in order and restraining incursions into Mexican territory. That better success has not attended our efforts, and all incursions prevented, is in a great measure owing to the entirely defenceless condition in which Mexico has left her whole frontier. She has, as we understand, employed very little or no force in protecting it, and the sparse settlements along the line have not been in a condition to defend themselves. The weakness of the Mexican border,—the consequence of the neglect of the duty of protection,—has invited incursions and opposed no obstacles to extensive depredations. It would be singular indeed if the United States could be held liable to indemnify Mexico or her citizens for injuries which she invited or at least might have prevented, and in virtue of being a government was bound to her citizens to prevent. The President approves of the position taken in the instructions to your immediate predecessor that the United States has fulfilled the obligations contained in the 11th. Article of the Treaty of Guadalupe Hidalgo. If this subject is pressed upon your consideration it will be proper for you to present the foregoing views to the government of Mexico. While we deny the justice of the claims on account of the infraction of that article we admit that it imposes serious obligations upon this government from which it would gladly be released. You are therefore instructed to ascertain whether there be on the part of Mexico a disposition to enter into an arrangement embracing a final adjustment of all the matters to which I have alluded, vizt: a new line giving to this government additional territory for a feasible route for a rail-road;—a release from the obligations of the 11th: Article of the Treaty of Peace and Limits;—and a settlement of claims upon the respective governments by the citizens of each. For such an adjustment the United States would be willing to pay liberally. The sum which has already been offered for the two latter objects ought to be satisfactory for all; it might however, be considerably increased if the proposed new line could be embraced in the settlement, but the amount claimed by Mexico for damages under the 11th. article of the Treaty is so exorbitant that it can hardly be believed she expects any thing like it will be acceded to. The claims of our citizens upon Mexico will hereafter be presented to you more at large with further instructions for arranging them. As soon as you can ascertain the general views and expectations of Mexico on these several subjects you will communicate them to this Department and if there be a fair prospect of coming to any conclusion thereon you will be furnished with more definite instructions.

An important object of your mission is to place the commercial intercourse between the two countries on a better footing. The unsettled condition of affairs in Mexico for many years past has very much diminished our trade with that country. The constantly occurring political revolutions there rendered commercial intercourse unsafe; the frequent changes in her tariff and the severe penalties for the non-compliance with it,—even when imperfectly promulgated—was vexatious and often ruinous to our merchants. The Department is not accurately informed of the recent changes which have been made in the laws regulating her foreign commerce; nor has there yet been time to show how the present system will affect her foreign trade. You are directed to furnish this government with early information not only in regard to the system but its operations. You will make known to Mexico the desire of the United States to establish with her intimate commercial relations on liberal terms. Such relations would in every respect, be advantageous to both countries.

In the foregoing instructions the proposal directed to be made for the maintenance of the *status quo* in the disputed area of the frontier was definite; otherwise Gadsden was authorized merely to ascertain and report "the general views and expectations of Mexico" on a

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cession of territory for a railway route, a release from the obligations of Article 11 of the Treaty of Guadalupe Hidalgo, and a settlement of claims of the citizens of the two countries; a "final adjustment" of these matters was in mind, but a global adjustment seems not to have been in contemplation, for the policy in respect of the Garay and Sloo Grants was expressly reserved, and the general words regarding American claims are not to be read as including any claim of the holders of either grant.

On the day after the date of the instructions Marcy wrote to Gadsden that he was retaining them until July 18 in order to "submit them to the President who has not yet, by reason of his absence examined them" (D.S., 16 Instructions, Mexico, 413, July 16, 1853). Doubtless President Pierce gave his approval before transmittal; but one must doubt that those instructions had been discussed in Cabinet; in the matter of the extent of territory desired Marcy had written that "the sole object" of the United States in seeking a change of boundary was "an eligible route for a rail-road"; the views of Jefferson Davis, then Secretary of War, very influential in the Cabinet of Pierce, and an intimate friend of Gadsden, were expansionist, as shown by the line proposed by him in the Senate on March 6, 1848 (Executive Journal, VII, 322–23; this was during consideration of the Treaty of Guadalupe Hidalgo, charted in Paullin, Atlas of the Historical Geography of the United States, plate 94A); and the later instructions were of a quite different tenor.

Gadsden presented his credentials to Santa Anna on August 17, 1853, some days after his arrival at Mexico City; and in his despatch of that date he wrote (D.S., 18 Despatches, Mexico, No. 1; Manning, *op. cit.*, IX, 600–601):

> I was gratified at your having suspended for the present, all instructions on the Hargous and Sloo Grants, as I am satisfied that those private claims, should not be permitted to interfere with the more important public matters of the adjustment of Boundaries: and of getting exonerated, from the responsibilities of the 11th article of the Treaty of Guadaloupe.

Gadsden was soon besieged by American claimers; two weeks after his official reception he thus reported (D.S., 18 Despatches, Mexico, No. 2, August 31, 1853, excerpt):

> I have found the duties of this Mission for the brief period they have devolved on me very onerous: and greatly complicated by the multiplicity of private claims which had engaged the attention of my Predecessor; and of *many others:* of which I have had the intimation are soon to be presented for examination and advocacy— The practice which seems to have attained at this Mission— Whether from personal sympathies towards supposed aggrieved fellow Countrymen; or from an erroneous sense of official obligation to receive, and advocate private claims, before they have passed the examination: or received the confirmation: or condemnation of a Tribunal of first resort, has transformed the Minister into a mere Counsellor and Attorney at Law—
>
> It has exercised, in my Judgement and therefore it is that I have brought the subject to your notice: a very *injurious* and *suspicious* influence on the higher relations between the Representative of our Government, and those who are charged with the responsibilities of the other, where he is accredited—
>
> It has already gathered around this Mission a swarm of importunate and complaining sufferers: and who seem to be increasing in a Geometrical ratio, as

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fortunate Predecessors have been recognized and releived in the ratio arithmetically— On the present occasion there are indications exteriorally of a multiplication of these claims claims to a fearful extent: under an expectation that the Government at Washington is well advised of their existence, and that liberal provision will be made for their payment in any new treaty of adjustment, which the Minister may have the good fortune to conclude— You may thus recognise the embarrassments which even American Citizens, may thus throw in the path of an early and satisfactory adjustment of the pending issues with the Government of Mexico—

There seems therefore a propriety and even necessity: of a discrimination to be made between the private claims of Individuals, which should demand the interference of Ministers: and those to be adjudicated by authorized Tribunals: and what *class of even these*, so disposed of involves the responsibility of Ministerial interposition— I should be pleased to have the views of the Attorney Gen^rs^l of the U States on this subject; not as a matter of possible releif to myself, but as to the appropriate Ministerial Relations to be maintained with the Government where accredited—

From the outset Gadsden had stressed the "extremeties of the [Mexican] Treasury" (despatch No. 1, of August 17, 1853, cited above); on September 5 he wrote his impressions and views at length in an unsigned private paper (perhaps sent to the President) which was surely [1] at Washington some time before the instructions of October 22 (printed below) were framed and may well have been of influence thereon; so far as the records show, this was the only significant communication from Gadsden that could have had such influence. The text follows (*ibid.*):

Memoranda of Facts: and Speculations on the past present and probable future condition of Mexico—

The History of Mexico since its independence of Spain has been a narrative of Revolutions— They have been so frequent: and so little productive of important results as to scarcely merit the name— From the changes which have followed in quick succession; The French *Emutes;* are more applicable—

The Government of the Vice Roy: was one of *power absolute* and *obedience implicit.*— No Individual dreampt of resistance; and for so many centuries had the system of resignation and submission to Church and State: been recognized; as to become a habit which no example: or time has inspirited the People (if there be such a Class in the Population) to shake off— In achieving a triumph over the power which emenated from Madrid: it was only with the design of substituting one equally as *strong* and of its own creation at home— Independence of Spain was all that was accomplished in 1822 or 23— An Iturbide was a mere instrument in the hands of the Triple Alliance; between *Church:* the *Old* or Native *Spaniards;* and the *Creoles*, to carry out their behests— This change effected: The Command of this Vice Roy Power; soon became the bone of contention: among those who had by union alone, rescued it from Spain— There was no portion of this combination; that had the least glimmerings of *political equality*, and *liberty* or of the knowledge of *self Government*— The *few* who had read the history of the U States, and been inspired by its success; had not the early Anglo Saxon education into the Arcama of Constitutional Liberty; and hence thought that in uniting to cast off the Spanish Yoke: they had achieved what they aspired to— Unlightened themselves, they have been unable, after an interval of 30 years; to enlighten others on the principles of originating; establishing; and perpetuating Free and Representative Government— The Revolution therefore of the Tripple alliance has been to divide the governing interests into Three (3) Parties or Factions—The Conservative, or old Monarchical influence consisting of the Church: and the largest portion of the old

[1] The date of receipt is not indicated.

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Spanish Inhabitants—The *Moderates*, or as sometimes called the Constitutional or Federal Party—and the Poros: the extreme of democracy, under the delusion of acquiring an influence through the Indian & Mixed Races; misnamed the People; and which have about as much influence influence on the Government, as our African Slaves— They belong to the Church— The Poros proper are a mere faction; that coalese at times with the moderates: but whenever in power: distract through the Legislature; and in the end contribute to upset those who they at first united with— The Government therefore: and which power alone can sustained, has introduced an essential element the Army—which becomes the instrument, in succession, of upsetting every rulling power; by enlisting in the service of every disaffected party or faction who can pay *best;* or with *certainty*— For the Army, as strange as it may seem, is the least ambitious or avaratious portion of this strange Community—and very subservient to those who meet out their regular pay and rations— The Materials of which composed are the most controllable Race; I have ever met with— Give them punctually their 2 or 3 Reals a day; their cloathing, their Tortulas; and their Chocolate: with a Glass of pulque and you find no aspirations among the rank and file to be promoted— They have but one instinct: to adhere to those who administer to their Comforts, and wants.

The Predominant power hower is still in the Priesthood and the Church: and for the reason: that they are in possession of 2/3 if not 3/4th of the productive or available property of Mexico—and can alone on emergencies raise the amount necessary: to stimulate or suppress a revolution— Though openly and avoudedly in favor of a Vice Royalty of their own Creation; the slumbering element of that Mexican phanton, Liberty, and the Constitution, has still been so strong as to prevent their confirming that absolute sway on Any: who in the frequent changes here they may have placed in power— The Government of the day; like the Vice Royalty of old; has become an odious monopoly: held together by the cohesive influence of plunder: and for which each faction, in succession is contending— All the old system of extortion from the Masses; for distribution among those who can hold the control: is in full force—and a regular barganing for the spoil—*Is the Government*—while there is enough to satisfy the hungry digestion of those who claim a share: and to keep the army true: the adverse public sentiment is overawed; and for a time the Car of State moves on in proportion to the supply of steam to the political Locomotive— But when this fails the signal of revolt is raised— There are constant elements for contention and strife at work in this truly distracted Mexico— The fires of discontent smothered; but not extinguished; and ready to burst into a flame whenever fuel is supplied— Like the realities which too frequently lay our Cities in Ashes, These are ignited by a every *breeze*, without an *object;* and in their turn destroy those who have fanned the elements into a Rage— . Every Revolution or Change has been the foreshadowing of another in embryo, and made with so little design; that the alternations are in harmony with the rebellions of a College: because Masters & Professors hold the Rod— Money the object, is the controlling power— It effects changes—and is essential to the preservation of those who by it are placed at the helm

The Moderate party sincere in their political objects: and most exempt from individual selfishness; would be pleased to take the U States as a guide—but they are incapable of comprehending the elements and strength of our system— Like a Ship at Sea; and with a mutinus crew below; when single and alone on reaching the quarter deck, they are without a helm,— The numerical strength: and the monied power: the *Priesthood* and the *Monopolists* are all in opposition— Though by the Civil distractions and political ebulitions of the day: they find themselves at one period on the surface; Another month or year places them at the depths below: of the ever revolving currents of anarchy, and discord— If supported in power, or could command the revenue which would secure power: they would in time accomplish the political redemption of this otherwise truly favored land—

The last Emute; which has placed Santa Anna at the head of affairs; was in character with those which had preceeded— It did not originate with the old party of Santa Anistists;—now almost extinct—but from a *fretful* discontent in the Legislature; in want of revenue; and who would not support the President—

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Arrista rather than proving treacherous to the Constitution; by dissolving the Legislature and throwing himself into the hands of those who would have given him the means, preferred to abdicate— Cervallos; the Supreme Judge of the Court filled Constitutionally the vacancy, but in the condition of his Predecessor Could do nothing— The Army was made use of to place General Lombardini, as the locum tenens of the power which should prevail— The Army was then influenced to declare for Santa Anna; but the other interests came in gradually and reluctantly— The Republican & Puros: remained quiet—never acquiesed— holding themselves in reserve for Another opportunity in the turning of the wheel—

Santa Annas: position therefore is one of power: and can only be maintained: by a Military force— Hence his policy has been to strengthen his army; and has to resort to conscription to fill its ranks—and to quiet them by the accustomed pay, cloathing; and rations— To accomplish this he has thrown himself into the hands of the Conservative; & monied power— Thus far he has raised a sufficient force, to give to each City the appearance of a garrisoned Town— Here the show is largest— Ten Thousand the estimated force: and parades on the squares & exhibitions in the Street frequent— The Ministerial Residence is not overlooked—and the Minister enjoys the opportunity of a daly inspection— The first organization was for 90 to 100000 Thousand— The Secretary of War has been forced down to 45000: of which not to exceed 30,000 are as yet embodied— As the Revenues have fallen below expectation: and the late Minister of Finance reports 17 millions deficiency for the year—and has retired, as is well understood from disagreements in the Cabinet: on the measures of replenishing—it is probable that the other, and expected sources of private supply have failed.— One of the projects—to borrow the Credit of the Church was instantly rejected—and that predominating influence remains quiet; and can only be made to disgorge by force— The President is not the man to attempt it—and as threats have been tried without effect; it is most probable that the Church have no apprehensions— The Monied Men have all their accumulations in safekeeping— Many it is thought availed of the last Conducta to place their funds beyond the grasp of violence— The Conducta had 4 millions: and smaller shipments of Gold & Silver is going off to the U States; by every opportunity— This class of the Conservative interest: have no idea of being taxed— They are the great sharers in the spoil party: and go for a division of the plunder: and though able to raise any amount; they dont comprehend the policy of sustain the power, that manufactures the spoil—

The Presidents high qualities—are—First selfishness—and an inordinate love of money without restraint— He has no lofty ambition: for he has the position now to gratify it— All his policy in the Government of the State: is directed to the taking care of himself— In Common language but expressive—"To make Hay while the sun shines"— All his Counsellors and advisers have the same instinct to take care of self in plundering others— They cannot be made to appreciate any other rule of action— They consider Americans as peculiarly influenced by such motives, and have no more trust in an American Ministers coming here to represent his Countrys interest, than they have in Santa Anna' resuming political power: or in their sustaining him: but under a coperation and fraternization; on a division of the Public spoil: *domestic* and *foreign*—

Second The President is said to be *treacherous*, and that he is capable of sacrificing friends to the higher quality selfishness— Hence the Party of Santa Anistists has disappeared— Its members absorbed in the other parties—most of them in communion with the Moderates—and for the reason that they have been sacrificed by the President in his efforts to coalesce with the stronger party of Conservatists— These however distrust; and will be cautious; for the cause; which has occasioned the dispersion of the Santa Anistists— His treacheroury has destroyed a party which he once could rely on; and has not as yet, conciliated another which has a greater ability to serve and protect— If they could be induced to confide and aid to the extent of their means: Santa Annas power might be consolidated & established for a time— But not having come as yet to his Cordial support; his position is becoming weaker daly; and whenever the means of subsisting and of enlarging his Army: falters; it will be the signal of an outbreak; and the force he has raised; employed as the instrument of his dis-

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truction— On the suspicion that the one thing needful is failing—Spasmodic symptoms of a new Emute has excited alarm— At least the Government has given evidence in the arrest of Col Robles, and his person confided to a guard that left the City the same evening— He is a Moderate: of intellegence: Firm as an Officer of Engineers: and said to exercise a powerful influence over the Regements of Sappers & Miners— The one stationed in this City was sent to Chihuahua; simultaneously with his arrest. An edict of exile or rustication was issued against others on the same day— Among these Rosas (the former Minister to Washington) and his family— Many others have received intimations to take leave—and the late Minister of Finance is watched with a suspicious eye— There is no information at present more reliable than that the elements of disaffection are at work—preparing to avail of the first favourable opportunity to dismiss the present dynasty— The want of organization under an efficient leader may delay the move—and hence the probable arrest of those to whom the disaffected were turning— A storm is certainly brewing; whether it will appear on the horrizon and with what effect remains to be seen— At Puebla & Jalappa: demonstrations have been observed, and the Late Governor of the first place is under arrest— The President, is reported as Revengeful: Tyrannical: and blood thirsty:—without the nerve to exercise; even where the Military power to execute is at hand— The fate of Iturbedie is supposed to admonition:— What he most dreads is retaliation— It is the common language among friends (and which explains his seclusion surrounded by aids & a Guard) that this is the Presidents last chance; that if he now betrays his country: or fails in maintaining his power that his days are numbered— Like Louis Napoleon: he has to overawe opposition and revolution; or he will meet with a fourth deposition: without the opportunity of a flight—or of a retreat, untill another recall—

The Continuance of Santa Annas power; is by Military force: the means to conciliate it—and the will to apply it in overawing— The first An Army is easily recruited: if the second is at command— The reliance on the Church, and Capatalists who Submitted on the recall: has faltered, if not failed, and a Revenue from Rents, and a new Tariff if it should prove sufficient—must come in too slowly for the immediate necessity. Watchful of that occasion for an Emute: as the President knows; in his immediate necessities, he may be more disposed to look to the U States; and her liberality— His pretensions have hitherto been high; on indemnity under the 11 article—and for a recognition of the Bartlett Boundary— His necessities therefore will alone induce him to favor an adjustment of both, by a consideration to be paid on an extension of Territory— These impressions have influenced me in avoiding any immediate discussion on our issues or negotiations for settlement; untill the same were pressed on the part of the Mexican Minister— A communication received; and under consideration, I think opens the path; but must be so managed as to force propositions from their side;—based on their necessities— The Amount required for immediate purposes it is beleved cannot fall short of the Ministers report of deficiences to be provided for—but it will require a Much larger sum to establish the Government: and protract its existence to a period necessary for its more perfect organization; and consolidation— An Amount which may involve a much larger extension of Territory than was contemplated by the Executive— Sonora and Chihuahua; may be necessary to meet the smaller amount—and all the States bordering on the Rio Grande the latter;—so as to establish a more perfect, and durable boundary;—along a line of Mountains called by some Sierra Madre: but properly a spur from it known as the *Sierra Verde*:—and which expires or depresses on a Sand Ridge on the Cost near Victoria in Tamalipas— Santa Annas necessities as to amount and immediate relief; will be the only considerations on his part to conclude a negotiation on any terms involving sale of Territory— He has blustered much on the subject—and has manifested great sensitiveness, untill of late; whenever mentioned and has even exhibited (which he now intimates was feigned) hostility to the U States— His Minister has on all occasions expressed alarm on the unauthorized invasions of the Territory— Hence the necessity of being discreet in developing any wish to expand, and to bring out a proposition from the opposite side— His immediate necessity will be the only stimulus to him: and preparation to meet on my part the surety of success— Though instructed to refer this matter, for further instructions, I

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should be wanting in my obligations to my position; if I did not avail of any occasion, imposing immediate action: to secure our object: assured that whatever amount or conditions my judgement may sanction: for the Two or the Five States: bordering on the Rio Grande, the Gela & the Gulf of California—will be sanctioned by the Executeve— But the embarrassment in my path of success: may be on the inability to guarantee the immediate payment of a portion of the purchase money: and which Santa Annas immediate necessities may require— Has not the President a Contingent fund of some ten millions— To what amt may I draw against it— I would be pleased to have your views in time; as to the Conditions to be paid for Each of the States named, including South California if it is thought advisable to embrace it in the purchase— I have been somewhat prolix: that you may the better comprehend what I consider the moving springs of successful action in my Mission and how necessary it may be to be prepared to meet & adjust the issues; without reference for larger instructions; relying more on an approval of the responsibility I may assume; than hazard a failure, in awaiting for authority explicit & not general— There is one contingency which however seemingly improbable; may be nearer at hand than any at Washington may have dreampt of— The fact of Santa Annas final resort in his extremities to the US—and the probable approximation to relief; from that quarter: may be the approved occasion of the Moderates; to anticipate him by an Emute, which may again cast them on the surface of the Troubled waters—and make them the controlling influence for a new treaty, or the Confirmation of that Programme: which may be in progress— If they achieve a Triumph; as the Government de facto. the Minister will recognize and being again accredited: transfer the purchase in progress: or open new negotiations— But a higher responsibility under the latter a renewal of negotiations with a new Party may be involved— They may tender as more to be preferred on their part: the surrender of the whole Country: to be annexed hereafter under our Constitutional requirements as States of our Federation— The possibility should not take you by surprize— The Moderate or Federal Party to which is now attached the Legal ability of Mexico and has in accession the Santa Anists; disappointed and discouraged in their repeated efforts to establish a Constitutional Republic of their own; assimilated to that of the US. are awakning to the opinion that no process of accomplishing their designed object, remains but by *ultimate annexation* to the U States;—with the immediate protection as a Territory; untill they are tutored and prepared for a final consummation of a Union of all the States of North America under one *Continental Federation*— At this Crisis How Should your Minister act—? His instinct is to receive and protect—

In a private despatch of September 18, 1853, Gadsden thus pictured the political and financial situation as he saw it (D.S., 18 Despatches, Mexico); this despatch, if received on October 26, as endorsed, was not before Marcy when the definitive instructions of October 22 were prepared:

Longer residence, and greater opportunities of extending observation and of acquiring information: have confirmed most of the views communicated in my previous notes— The Government of Mexico has but one Element of existence: & which is successively transferred to others—, The attractive Cohesion of the monied influence— This is essential to maintain the power to divide & plunder— The present is a Government of Usurpation— The Federal & Representative Elements have all been suspended— The Constitution a dead letter: and Legislative, Executive (and in practise judicial power) centred in Santa Anna— He must have power to justify and maintain usurpation— The Army & money to pay it the only means: and the adherents around him know it— Santa Anna continues constant in his policy of Military Organization— The sudden and unexpected death of General Tornel the Secy of War has greatly embarrassed him— Tornel was the right Arm of Military organization, and with money at command: was probably the only one who could have carried it through: and sustain the powers that be— The work of embodyment (though conscription was resorted to) has not equalled expectation; and the projects to raise revenue: the one thing needful: still continue discouraging— The estimate of the Army em-

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bodied fall far short of my previous report— More favourable opportunities of judging would reduce the whole Military force in the Republic to from 15 to 20,000— In this City though 7 to 10000 are reported on the 11. of Sept when great exertion was made for display, the rank & file of the 3 arms did not exceed 32 to 3300— The dependence of the powers that be to sustain themselves is on the US—and there is less repugnance to the surrender of Territory than was at first evinced— There has been some sensation showed on the contentration of troops on the frontier— I have no dout that the increase of our Garrisons & if the rank & file on the whole line of the Rio Bravo will operate advantageously— So on the Ocean— We should have a class of small steamers or Gun Brigs to look into the Mexican Ports on the Gulf as well as the Pacific— We should shew on all occations the sword, however Covered by the Olive, to these People— As President Polk said (Conquer Peace)— They are peculiar in their notions & influences: and we must be governed accordingly— Could not Ringold's surveying squadron be diverted for a time from its destination the Swandwitch Islands & East Indies: to the Gulf of California— A visit to San Blas: Mazatland & Guymas: with a hasty exploration of the shores of the Gulf to the head, or Mouth of the Colorado, would not be without its influences— There are many irregularities injurious to the American trade practised in this ports by Officials cloaked with brief authority which should be looked into— The British have a sloop of war that visits the Gulf annually and which is low some where in the neighbourhood of Guymas. This gives to the British Merchant decided advantages over the American— The next week will probably be full of developments— To day we have intelligence that Matamoras has pronounced— Yesterday that Alvarez the Governor of Guerro is disaffected— The Governor of Puebla & Gen[l] Robles are still in confinement:

There is certainly some Elements at work which may break out soon and may possibly change the Parties with whom we may have to treat— I shall be vigilant & not compromit any of the interests confided to my charge—

During the opening weeks of his mission Gadsden was also having an extensive correspondence with the Mexican Minister of Foreign Affairs, Manuel Diez de Bonilla, on various subjects, among them Mexican claims under Article 11 of the Treaty of Guadalupe Hidalgo (Bonilla to Gadsden, August 30, 1853; the latter to the former, September 9, 1853; *ibid.*, No. 4, September 18, 1853, enclosures); these exchanges Gadsden rightly considered "the initiatory to a negotiation on the vexed questions which at present disturb the relations between the two countries"; and in the despatch just cited [1] are also these passages of forecast (the despatch and its two cited enclosures are in Manning, *op. cit.*, IX, 603–5, 609–17):

it is most probable that I will receive propositions for a convention to arrange all the disagreements between the two countries, which may involve the cession of additional Territory on the one part: and the payment of an adequate compensation on the other— The amount to be paid will probably be the issue most difficult of adjustment: as it is certain that the necessities of this Government: will raise their pretensions very high— In this you will recognize the importunity with which claims for Indian depredations have on all occasions been pressed, and the extent to which they have been exaggerated in all the statements presented— In this mode of probable adjustment, I have no idea that the 32° of latitude can possibly meet the views of Our Government in seeking an extension of Territory on the Mexican Border at this time— Had you acceeded to my proposition of placing the services of M[r] Gray [2] at my disposal, I should have been better prepared to act advisedly on the subject when under consideration—

[1] This despatch is marked as received on October 26 and thus after the definitive instructions of October 22 had been written.

[2] Andrew B. Gray, Surveyor for the United States under the Treaty of Guadalupe Hidalgo.

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I have endeavored to be informed from various other sources as to the Topography and character of Northern Sonora: and feel convinced that no latitude north of the 31° will answer the purposes of the U States Government— A *natural line* further South embracing better ground for a road, and greater inducements in the climate: soil and mineral resources for settlement, will be found to better subserve the objects of both Governments, in *restraining Indian incursions* and in *promoting the harmony* of *border neighbourhood*— It is most probable that in the adjustments by convention proposed: the settlements of the claims of our citizens on Mexico and the relinquishments of claims on the Tehuantepec grants may be involved— The articles in the Public Journals referred to make mention of such an arrangement as desirable— You promised further instructions in these matters and in the absence of them I may feel embarrassed unless I act on my own responsibility on propositions which may be favorable to the interests of all parties

Two conferences between Gadsden and Santa Anna followed, respectively on September 25 and October 2; they are thus reported [1] (D.S., 18 Despatches, Mexico, No. 6, October 3, 1853):

It [Gadsden's note to Bonilla of September 9, cited above] led however to an intimation from the President of Mexico that a personal interview with me would be gratifying to him— That interview which took place on the 25th ult. resulted —First—in an understanding,[2] that the disputed Territory should remain in Statu quo— The troops of neither Power to occupy it during our negotiations, and information: and orders were to be transmitted accordingly to the commanding officers on the Frontiers— Second—that the Government of Mexico were willing to negotiate for a new boundary involving extension of territory So as to reconcile the conflicting interpretations of the articles 5–6 and 11 of the Treaty of Guadalupe Hidalgo— As neither party were prepared to present or entertain propositions on that basis of adjustment: the subject was deferred to another interview— This was held on the 2d instant at which I presented a memoranda, herewith enclosed, embracing a wider range for the harmonizing the relations between the two neighbouring Republics: than that limited in the enquiry submitted at the first interview— On reading the views which had induced me to present to the consideration of the President of Mexico: the policy which strongly recommended our looking to the future as well as to present, in negotiations which were intended to perpetuate and strengthen the friendly relations between two neighbouring powers: he at first appeared disposed to study and reflect on them— In the course of conversation however: he observed that he was so persuaded that the nation would be so strongly opposed to any other dismemberment of her territory than that which might be embraced in the first proposition: and for the purposes therein stated, that he could not for a moment entertain or

[1] This important despatch of Gadsden of October 3 and also his No. 7, of the same date, are marked as received on October 24; doubtless at the same time came his private despatch of October 3; so probably none of them was in the hands of Marcy until after the definitive instructions of October 22.

[2] In a note to Gadsden of October 27, 1853, the Mexican Minister of Foreign Affairs formally declared "that there has not been, nor could there have been, any accord or agreement on the part of Mexico whereby she consented to place the part of her territory indicated by Your Excellency, known by the name of La Mesilla, in the dubious position implied by an *agreement with reference to the statu quo of that matter*", but alluded to the "well-known fact" that Mexico had removed "the forces which were proceeding to La Mesilla without even reinforcing the frontier points on this side of the Bravo". In his answer (October 30) Gadsden wrote that "the United States must feel relieved from any recognition of a similar obligation, and at liberty to be governed as necessity or policy may impose, . . . though with no design . . . to take Military or forcible protection of the Domain which belongs to her, so long as the spirit of the Article 21 [of the Treaty of Guadalupe Hidalgo] can be invoked" (D.S., 18 Despatches, Mexico, No. 12, November 3, 1853, enclosures; the two notes are in Manning, *op. cit.*, IX, 647–49). The *status quo* was in fact maintained.

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discuss the strong political considerations, which had been presented on my part and which so recommended the anticipation of what in the future might possibly be to the advantage of both powers— That for the present he did not feel that he could be Justified or sustained in any other negotiations than those which contemplated the settlement of existing disagreements— The conference therefore terminated: with the understanding that he would be pleased to hear further from me on the first proposition which was submitted and acquiesed in at the previous conference on the 25th Septr— With the expectation that the mail by the Texas due here on the 8th instant may bring me instructions or suggestions from Washington, which may have a favorable influence on any arrangements which it is the desire of the Government of the U States to effect with Mexico: I shall defer any propositions which may be expected from me to that period— The conference of the 25th of September closed with an order for the release of the Schooner Allen and Crew detained at Acapulco, and for the discharge of the Californian Mager, confined under legal arrest at El Passo— In the correspondence marked I. the Minister seems very solicitious to impress on me the motive which induced the President of Mexico to stay all further proceedings against the arraigned: and in the accord which was made on my part: I presume I have correctly anticipated the approval of the President of the U States— The conduct of the Captain of the Allen: in the second issue: had certainly committed himself and crew (and condemnation under the evidence before court seemed inevitable) to a penalty far greater than the imprisonment he has already endured under arrest— Mager was likewise arraigned for a trespass: committed within the territory of Mexico: and which had it gone to trial would most probably have involved a heavier penalty than the period of his imprisonment and which would have been protracted during the progress of trial— I deemed it therefore advisable to accept a release of the parties under accusation and trial: and to accord to the Mexican President the *credit of a courteous concession:* which may have its influence in the approaching negotiations— I think it probable that I will send if I can engage a Reliable individual to El Passo: not only with a view of communicating to the Commanding Officer the intellegence herein conveyed: but to send a permit, which the President of Mexico has accorded to examine the Country over which we desire property and Jurisdiction—if a reconnoitering party in that quarter can be organized for the purpose— It is most probable my express may reach in time to meet Senator Rusk [1] and his party: and although the examinations proposed may not be made in time to aid me in my negotiation: the information collected may prove valuable to the Department of War: in the investigations imposed by an act of Congress in relation to a Rail Road to the Pacific—

The paper headed "Memoranda" which Gadsden presented to Santa Anna at the conference of October 2 is of much interest; it shows that in two major respects Gadsden had not kept within the confines of his instructions; "to reconcile all existing disagreements" by treaty meant the writing of clauses on the Tehuantepec grants or on one of them at least; and the cession of territory suggested by Gadsden in the "Memoranda" is enormously beyond that proposed by Marcy under date of July 15; in this regard the views of Gadsden are in accord with the instructions which he was to receive in November; and it may well be that in letters from Washington (perhaps of Jefferson Davis) Gadsden had been informed of the different attitude that was to be taken. The "Memoranda" is of this tenor (*ibid.*, enclosure):

Memoranda—

It is understood that the two Governments have consented to reconcile all existing disagreements on the basis of a new treaty: which may involve the acquisition of additional Territory: for the purposes of Securing a line more ad-

[1] Regarding the tour of Senator Thomas J. Rusk, of Texas, see Garber, 24.

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vantageous to both Republics: in its greater capacity for defence, and in securing the right of way, and a transit for American Citizens to the Pacific—
On this basis I shall be prepared to entertain or to make a proposition for satisfactory settlement and adjustment—

—Second—

There are strong considerations however which might make it advantageous to both Parties—The one to surrender a larger Territorial domain than that mentioned above, and the other to accept by the payment of an adequate and just compensation for the same— These considerations are to be induced or influenced by the disposition of the people of both Republics, residing on the frontier: and in the neighboring Border States: who equally impatient are constantly committing the friendly relations of the two neighboring Republics: by precipitating measures which at a more distant period must be accomplished—unless successfully opposed by non intercourse—by neighborhood hostility: by military array and preperations: and by the disposition of armed forces on either side, involving a continued frontier war—each Power armed against the other at great and burthensome expense— The Government of the U States are not desirous or ambitious of any further extension of domain on the Mexican border: than that noticed in the first proposition: and which is solely with the view of reconciling the vexed questions and adverse interpretations of the 5, 6 and 11 articles of the Treaty of Guadalupe— If the Mexican and U.S. Government see that it might be advantageous to both to arrest in advance the increasing spirit and threatning tendencies of the border difficulties into which the citizens of each are daily involving the two *countries:* and from causes which can only be removed: by so extending the boundary of one Power as will make it from its strong natural mountain outline, a *permanent* and *respected barrier* between both countries— Then propositions if acceptable: will be made on the basis of a *mountain* and *desert boundary:* for the purchase of two or more border States: on a fair consideration to be paid— It is an old national maxim which all history has confirmed, that rivers and valleys unite a people—mountains and unpassable barriers separate— No power can prevent in time the whole valley of the Rio Grande from being under the same Government All the sympathies of the Mexican States west of that river must and will be with the State or states east— And either Western Texas must come back to the Mexican Government, or the States of Tamalipas: New Leon: Coahula and Chihuahua; will by successive Revolutions or purchases become united with Texas— These are solemn political truths—which no one can be blind to— It is for the consideration therefore of the two Powers claiming opposing jurisdiction to determine (where fate seems to have decreed) whether it is not in the harmony of good neighborhood to the advantage of both Republics to sell and to purchase: and thus anticipate a union of States naturally bound to each other: than to have it forced hereafter on negotiations which will become necessary for the readjustment of disagreements, which like those that now exist are now inviting settlement on the same harmonious basis—
The treaty of Guadalupe inculcates an instructive lesson— It is a wise policy that where events are inevitable they should rather be met by harmonious cooperation and concurrence than precipitated by violent and ineffectual opposition—

In another despatch dated October 3, 1853, Gadsden wrote that he hoped to return to the United States toward the close of the year for a brief visit, adding (*ibid.*, No. 7):

Besides this I believe that in a personal conference with you I can present much worthy of consideration and through which (if you concur) a commercial treaty; satisfactory to both countries may in the course of the year be arranged— This will do more to harmonize good neighborhood: than all the treaties which can be made involving extension of territory: and right of way for Rail-roads—

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In still another despatch of October 3 (*ibid.*, private) are these passages recounting his difficulties as Gadsden saw them and giving his thoughts on the Garay and Sloo Grants and their possible accommodation (the communication is illustrative of Gadsden's weird punctuation, capitalization, spelling, and English):

There are many obstacles, and however seemingly trifling; which may involve delay, though they now threaten defeat— If I am to credit what almost every one insinuates: other appeals more substantial than Courtesay; Titles, and adequate national compensation for Territory acquired, will have to be made— I have intimated it to you in another letter—but the Universality of the opinion: the importunity with which it has been obtruded, and urged on my Consideration; from many and suspected interested quarters; *As a Necessity*—and the oft repeated suggestions of the *Quo modo:* by which the oil may be applied to the Axle; (to which I have lent an unwilling ear)—has rather awakened doubts in my mind; that there are others around equally as ambitious of the Spoils: as these may be, who are accused, and arraigned as to be influenced by no other appeal— As correct as may be the charge: and as melancholly, for the Credit of human nature; may be the practise: to which on Every Change of Government, Each high functionary has yielded: I am not inclined to volunteer the *reintroduction* of the *softning appeal*—before forced on me in the progress of the negotiation— It may be well therefore that I be prepared: if the President yields to the necessity of respecting this Antient Franchize: and his knowledge, with that of Att-Gen Cushion, Secr Davis [1] and others, as to *usages* and *influences* here are often cited to me— I must confess however that my misgivings are so great— So confirmed in the Midst of smaller birds of Prey for the Carron: which it is said the appetite of a Nobler Hawk covets: that I should be cautious of acting on a *presumption* how I commit myself, and the Administration in recognizing the *necessity;* or in the attempt to administer what is so repugnant to the higher sense of the public integrity and fidelity of the Executive officers of our Government— But on this subject I look for your views by next steamer—

I feel somewhat embarrassed for the delayed instructions on private claims— This may interpose an obstacle to an early & favourable negotiation— They are multiplying daly, and, the incessant efforts to a committal of the Minister in their advocacy; are with the impression that such interposition will be considered a recognition of their justice, under any provision for payment of claims, which seem to be gaining credence far and near— I endeavor in all cases of doubt to defer a Ministerial interference untill I can receive further Instructions— The Mexican Government needs money— Their niecessities are great, and their pretensions very extravagant: The most serious difficulty in the way of extension of Territory will be *The Consideration* to be paid— The Articles in our News Papers as to objects in desiring an extension of Territory; have encouraged the idea & which have even been propigated by American Citizens: that our Government will pay any price demanded for the Right of Way for a Rail Road— I had read yesterday an extract from a letter from a Mexican Commissioner in London; stating that Minister Soulé, had "divulged" to him, my instructions: and among these, reference was particularly made as to the great desire of the Government to procure the right of way—and would merge the Teheuantipec Transit in the subject—&c &c— All used for effect—! If I was at liberty to insist on the recognition of the Hargous grant: and bluff it against extension of Territory in Sonora; for same purpose; it might possibly have some effect— What think you of an intimation, to confirm the Convention to the Sloo grant; if an indemnity was paid to the Grantees of the Garray grant from the Territory to be acquired south of the Gila; making the Sloo grantees responsible, as they ought to be, for a portion— If You are favourably disposed towards these suggestions You had better confer with Hargous, and Agents of Sloo, and ascertain what would satisfy the first, and what portion of the Amount agreed on; the latter would be responsible for— All the expenses of examination and Survey would certainly be of value to Sloo and these he

[1] Attorney General Caleb Cushing and Secretary of War Jefferson Davis in the Cabinet of President Pierce.

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should pay for independent of something due to Garay for having availed of that information to supercede the older Grant to him—

It is probable that if the "*appliances*" to which I have adverted become absolutely necessary to accomplish the object of extension South of the Gila; that it could be arranged through these parties: (with which it is said they are familiar) and thus cover the US Government agency in the affair— The amount of indemnity awarded Hargous: (for it may possibly to a large proportion be spoil) may be divided among those who have such a relish for it: and which the Government will have to pay to gain their ends— I will have, without being committed, the Representatives of the Two interests in Mexico consulted—

Every thing connected with the Government in Mexio is much unsettled: Discontent; disappointment, and faction are still at work— The arrests; rustications; and banishments: only give publicity to Santa Annas fears— He is on a volcano, which may explode in a month; and yet be smothered for a more protracted period— Money and an Army, that can be continued faithful; are the elements on which he must rely for a continuance of his power— The first he has to devise the ways & means for: in order to the secure the Second— All his policy at present is to make this a Military Power; when like Louis Napoleon, he may be pronounced as Emperor— This necessity may dispose him favourably to a Treaty with the US., provided the Compensation to be paid, is equal to his Cormorant appetite: and digestion— On the other hand he has been so denunciatory against those who he accuses of having dismembered the Nation, he has apprehensions that a Treaty, involving extension of Territory on our part: will be the signal for a successful revolution against him— You see in the Memoranda of a Conference sent you something of this apprehension manifested— Every thing therefore is in Embryo, and No one can anticipate the birth— A week may reconcile all our differences—but they must be paid for— And Yet difficulties may interpose throwing us back to the beginnings— A Commercial Treaty can only be made to follow the adjustment of what is before us— It cannot preceed

Permission "for a small commission sent by the officer commanding the North American boundary line opposite Sonora to reconnoiter this region to the west of the Rio Grande and to the south of the Gila" was formally granted by Santa Anna on October 11; Gadsden forwarded the permit to Brigadier General John Garland, U.S.A., who was in command of the American forces stationed at the frontier, "that he might avail of it in conformity to any instructions he may have from the Department of War" (*ibid.*, No. 10, October 17, 1853, and enclosures; see Manning, *op. cit.*, IX, 621–24). In the cited despatch Gadsden wrote thus of the position of the negotiation:

The correspondence, interviews, and concilitary adjustment of late of many private issues with the Minister of Foreign Relations: would have encouraged a proposition from me, before this, for the settlement of the Boundary question on the basis accorded to on the part of the President of Mexico had I been prepared to make one to my own Satisfaction— In the absence however of the promised instructions on Private claims: and those which particularly relate to the issues on the Tehuantepec Grants: it was impossible to submit propositions which would have been acceded to, unless they embraced an adjustment of every issue between the Two Governments— The President of Mexico has expressed his desire on this subject: and as I know that it is in harmony with the policy of the President of the United States, I have conveyed my assent to an adjustment of all the disagreements between the Two Governments in one Treaty— The delay however, which has occurred in the negotiations, will not operate to the disadvantage of the U States: For the Mexicans are very slow in all their business transactions: and any anxiety or precipitancy manifested by the opposite party,

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is sure to raise their pretensions or claims: and particularly where pecuniary compensation is involved—

Further elaborate arguments on the obligations of Article 11 of the Treaty of Guadalupe Hidalgo were penned at Mexico City; the note of Bonilla of October 18 contains over eight thousand words, and the response of Gadsden of November 14 is nearly as lengthy (D.S., 18 Despatches, Mexico, No. 14, November 19, 1853, enclosures). There was also a long note on the same subject from the Mexican Minister at Washington, dated October 22, 1853 (D.S., 7 Notes from the Mexican Legation); this was briefly answered two months later by Marcy, who pointed out that negotiations were in progress at Mexico City (D.S., 6 Notes to the Mexican Legation, 362, December 22, 1853; for the four papers cited in this paragraph, see Manning, *op. cit.*, IX, 625–47, 650–63, 152–53).

The first instruction regarding negotiations for a treaty written to Gadsden after his departure on his mission was this, in cipher, of October 22, 1853 (D.S., 16 Instructions, Mexico, 435):

This accredits to you Christopher L. Ward, Esqre, who is sent by the President as a Special Messenger, fully possessed with his views in regard to the negotiation of a new line with Mexico. His verbal communications on that subject you will regard as instructions from this Department.

Ward was agent of the Hargous interests, claimers under the Garay Grant (see Garber, 94). This explanation of the sending of verbal instructions was written by Marcy on January 6, 1854; but no reason for the choice of Ward as their bearer was officially given (D.S., 16 Instructions, Mexico, 442–45; in full in Manning, *op. cit.*, IX, 156–57):

It is hardly necessary to explain the circumstances which induced the President to send Mr. Ward as a Special Messenger to Mexico with verbal instead of written instructions for you. It was thought that there was at the time he was sent out a very critical state of things in regard to the ruling power in that country, and that immediate pecuniary means would be indispensable for its maintenance; and to provide these means in the apprehended emergency a liberal cession of territory might be readily made. But at the same time it was suggested that should it in any way become publicly known that such a cession was contemplated that fact would not only defeat the object but overturn the existing government. It was, therefore, deemed prudent not to intrust written despatches even in the hands of a Special Messenger. It was also apprehended at that time that the very unlimited power of General Santa Anna might soon be circumscribed and he would not at a future period be able to do what his necessities would then incline him to do in order to get the means to strengthen his doubtful rule.

These, and other considerations, led to the adoption of the mode of communicating with you verbally through a Special Messenger.

In considering the instructions of October 22, 1853, conveyed by Ward, it is important to note that Marcy had then received very little from Gadsden; assuming that the available records are complete and are accurate as to dates, it appears that Marcy knew nothing of Gadsden's interviews with Santa Anna on September 25 and October 2, for Gadsden's despatches of October 3 were not received until October 24; even his despatches of September 18 were not at hand

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until October 26 (cf. Garber, 90); so Marcy on October 22 was not aware that Gadsden, on his own initiative (or at least without instructions from the Department of State), was already committed to a global negotiation.

The instructions which Ward was charged to deliver are recorded in D.S., 3 Special Missions, 38–43, 277–81; and a draft and a signed original thereof, including the annexes, are in the same volume, bound between pages 46 and 47. The original which was given to Ward, and which Ward returned to Marcy before he left the United States, is with Ward's covering letter, dated at New Orleans October 31, 1853, in D.S., 19 Special Agents (the annexes thereto are bound in that volume following a copy of the communication of Ward to Gadsden of November 14, 1853). The text of those instructions and annexes, from the original last mentioned, follows:

Memorandum of instructions which Christopher L Ward, Esqr, Special Messenger to Mexico is directed to communicate verbally to James Gadsden Esquire Minister of the United States.

In the first place Mr Ward will present to him the Letter of introduction from the Secretary of State in Cypher and explain the circumstances which rendered it proper in the opinion of the President, to communicate his views in relation to a Treaty for a new boundary by a Special Messenger rather than in the usual mode,—by a written despatch. Should a despatch upon that subject be intercepted and its contents become known to others than to President Santa Anna and his most trustworthy friends, all hopes of making a favorable arrangement in regard to a new boundary, would be at an end.

Mr Ward will submit to Mr Gadsden the several lines which have been considered by the President. The sum to be paid for either of these lines, is to be a full consideration for the additional territory acquired by the United States in the change of the boundary, and for all damages and injuries which can be, in any way, claimed by Mexico, on her own account or on account of any of her Citizens under the Treaty of Guadalupe Hidalgo dated 2d February, 1848,.

There may, also, be a reciprocal article in the new Treaty releasing Mexico from all damages and injuries which the United States may claim for themselves or on account of any of their Citizens arising under any articles of the Treaty of Guadalupe Hidalgo.[1]

For line No 1 (with a general description of which Mr Ward has been furnished and will submit to Mr Gadsden) he is authorised to offer any sum up to fifty millions of dollars to be paid in annual instalments of ten millions of dollars—This line Mr Ward will be able to trace on a Map, and probably he can show Mr Gadsden the Map on which the line was traced here by the President.[2] This line is much preferred to any other, and is the best for both parties because it would be a permanent boundary, guarded and defended at much less expense than any other, and remove all serious apprehension of border difficulty. It would be desirable even with this boundary to get a stipulation releasing the United States from the obligations imposed on them by the XIth Article of the Treaty of the 2d of February, 1848. It is still more important if any of the lines hereafter mentioned should be obtained that there should be such a release.

For the line No 2, which does not include the Peninsular of Lower California, Mr Gadsden is authorised to offer the sum of Thirty five millions of dollars (if it cannot be obtained for less) to be paid in the same manner as is proposed for the payment of the consideration for Line No 1.

[1] This would have excluded and left open all claims *not* arising under that treaty.

[2] Probably Ward had with him this map or one similarly marked; the penciled notations to the descriptions of the four lines in the annex to this memorandum of instructions (see *infra*) indicate that those four numbered lines were drawn on *some* map in different colors; but no such map has been found.

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For the Line Nº 3, he is authorised to offer Thirty millions of dollars (if it cannot be obtained for less) to be paid in like manner. This line includes the Peninsular of Lower California

For the Line Nº 4 the sum of Twenty millions of dollars (if it cannot be obtained for less) may be offered to be paid in one and two years, half in each.

If it should be found impracticable to get either of the before mentioned Lines, then the object of the negotiation will be to get an eligible route for a Rail road from the Rio Grande to California. Frontera [1] on the Rio Grande is accurately ascertained to be in Latitude *31°48′* and some seconds. A Line from that point of Latitude due West to the Gulf of California would throw within the limits of the United States a very good—perhaps the best—route for such a rail road. Though there has been but a partial reconnaissance there is but little doubt here entertained that a Line on the 32ᵈ parallel of latitude would give the United States a good route for a Rail Road from the Rio Grande to the Gulf, but neither a Line from Frontera or on the 32ᵈ parallel would be a good boundary, and if no better one can be obtained, it is important that with it there should be a release of the United States from the stipulations of the Eleventh Article of the existing Treaty of boundaries. For a release of all claims for damages and losses under that Treaty, and a release from the Eleventh Article, together with a Line from Frontera or on the 32ᵈ parallel of Latitude the United States Minister is authorised to pay up to fifteen millions of dollars—

The sum mentioned for each line is the maximum which the United States Minister is authorised to offer. He will get any one of the Lines indicated for a less sum if it be practicable. He is vested with discretionary power to modify to some extent any one of these lines, keeping in view and obtaining the end which he is aware, the United States have for negotiating a new line. One of the modifications contemplated is the deflection of the line from the 111ᵗʰ Meridian of Longitude so as to pass by the shortest line to the Mouth of the Gila. This would equally with the proposed line secure the object of an uninhabited boundary but would give an awkward contour and deprive us of a port on the Gulf of California. Any considerable change will involve the propriety of a change in the amount of the consideration to be given. This is confided to his discretion influenced as it will be by the offers before specified.

It is believed that the condition of things in Mexico will not admit of a protracted negotiation and it has not been deemed expedient to complicate it with any other matters than a change of boundary, and the reciprocal claims which have arisen under the present Treaty of Peace and limits.

Should there be a prospect of making a Treaty within a short period Mr Ward will remain for the purpose of bringing it to the United States.

W. L. Marcy

State Dept. *Washᵗᵒⁿ Oct 22, 1853.*

Nº 1 Marked in Lake on the Map [2]

From a point on the Gulf of Mexico midway between the Boquillas Cenadas [*Cerradas*] and the Barra de Santander Westward along the ridge dividing the waters which flow into the river San Fernando from those which flow into the River Santander to the Coast range of Mountains. Thence obliquely across that range on the South side of the Pass of Linares and along the heights which

[1] The Honorable Lawrence M. Lawson, American Boundary Commissioner, International Boundary Commission, United States and Mexico, has been good enough to communicate this information concerning Frontera and its location (letter of March 29, 1938). Frontera, or White's Rancho, was a triangulation station of the Salazar-Diaz survey of 1852 and an astronomical station of Major Emory in the same year; it was reestablished during the resurvey of the Texas–New Mexico boundary made by Samuel S. Gannett, by whose report, dated July 17, 1930, the latitude is 31°48′43″.494 and the longitude 106°33′25″.081; the point is located almost two miles northwest from Cristo Rey Peak and lies on the northerly side of the Rio Grande, about two and one-half miles upstream from Monument No. 1 of the Western Land Boundary; the site is now a suburban district of irrigated farms.

[2] Here and elsewhere in the annexes to the instructions of October 22, 1853, penciled annotations on the source paper are printed in six-point type.

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border the desert plains of Durango to a point South of the Lakes de Alamo and Parras. Thence along the highlands on the West side of the said Lakes following the principal ridge which divides the waters flowing into the Rio Conchos and Rio Sabinos up to the mountain ridge contiguous to the Rio Grande. Thence along said ridge and across the Conchos river up to the parallel of San Eliasario and thence Westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California, from those flowing into the Rios Grande and Gila until the line so traced shall intersect the 111th degree of longitude West of Greenwich—and thence in a direct course to the Gulf of California at the 31st degree of North latitude. Thence down the middle of said Gulf to its Southern extremity and around the Southernmost point of the Cape of Lower California and along its Western Coast including all adjacent islands to the termination of the U.S. Boundary on the Pacific.

This will include an area of, say 125.000 Square miles.

Ultimatum $50,000,000 in an. inst: of $10.000.000

Nº 2. Marked in red pencil

From a point on the Gulf of Mexico midway between the Rio Grande, and the Rio San Fernando, Westwardly through the middle of the plain which divides the waters flowing into the Rio Grande and the Rio San Fernando, until the line so drawn shall reach the highlands, and thence along said highlands, so as to include the waters flowing into the Rio Grande to the Pass of Los Muertos, thence Northwestwardly along the highlands, including the waters of the Rio Grande, to a point on said River, between the mouth of the Rio Pecos and the Presidio del Norte, where the highlands thus defined are intersected by the Rio Grande. Thence along said river to the 31st degree of North latitude—thence from the cañon of the Rio Grande below San Eliasario, north latitude thirty one along the mountain ridge which is contiguous to the Rio Grande, up to the parallel of the Presidio San Eliasario. Thence Westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California from those flowing into the Rios Grande and Gila until the line so traced shall intersect the 111th of longitude west of Greenwich. Thence in a direct course to the Gulf of California at the 31st degree of North latitude. Thence west to the middle of the Gulf of California. Thence up the centre of the said Gulf and the Channel of the Rio Colorado to the present Boundary of the United States.

This will include an area of, say 50.000 Square miles.

$35,000.000 in instalments

Nº 3. Marked in black to the gulf & then in lake

From the Cañon of the Rio Grande below San Eliasario North latitude thirty one along the mountain ridge which is contiguous to the Rio Grande up to the parallel of the Presidio San Eliasario. Thence westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California from those flowing into the Rios Grande and Gila, until the line so traced shall intersect the 111th degree of longitude West of Greenwich. Thence in a direct course to the Gulf of California at the 31st degree of North latitude. Thence down the middle of said Gulf and around the Southernmost cape of Lower California and along its Western coast including all adjacent islands up to the present boundary of the United States.

This will include an area of, say 68.000 Square miles.

$30,000.000. in instalments.

Proposed Boundary.[1] marked by black line

From *the Cañon* of the Rio Grande below San Eliasario, north latitude at or near the 31 Thirty first degree, along the mountain ridge which is contiguous

[1] This is No. 4.

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to the Rio Grande up to the parallel of the Presidio San Eliasario. Thence Westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California from those flowing into the Rios Grande and Gila until the line so traced shall intersect the 111th degree of longitude West of Greenwich. Thence in a direct course to the Gulf of California at the 31st degree of North latitude. Thence West to the middle of the Gulf of California. Thence up the centre of the said Gulf and the channel of the Rio Colorado to the present boundary of the United States.

This will include an area of, say 18.000 Square miles.

$20.000.000 in two instalments.

Pencil annotations on the manuscript indicate that the four numbered lines were marked on an accompanying map in three colors: lake for No. 1; red pencil for No. 2; black for No. 4; part of the black of No. 4 and part of the lake of No. 1 showed No. 3. The four numbered lines of President Pierce and the line of 31°48′ are charted in Paullin, *op. cit.*, plate 94B; see also the text in *ibid.*, 66 (but observe that in that text, column 2, line 9, 31°48′ is misprinted 30°48′).

In view of the magnitude of the issues at stake, it is noteworthy that no draft clauses were sent to Gadsden; apart from boundary descriptions, questions of form and wording were left wholly to him; no full power was furnished; he was referred to no precedents; and no mention was made of Article 33 of the treaty of April 5, 1831 (Document 70), the annulment of which along with the annulment of Article 11 of the Treaty of Guadalupe Hidalgo had been proposed by Webster more than two years earlier, when a draft convention had been prepared (see Manning, *op. cit.*, IX, 89–92, August 19, 1851).

Ward arrived at Veracruz on November 5, left there by the diligence on the afternoon of Monday, November 7, and was in Mexico City on November 11, 1853; he wrote that he had "carefully communicated" to Gadsden "the instructions given me" and had "placed in his hands" the "Map containing a delineation of the various proposed lines of boundary" (Ward to Marcy, November 18, 1853, in 44 Marcy Papers, 42729).

Along with the recorded instructions to Ward should be read this communication to Gadsden of November 14, 1853, in which Ward gave a very fair paraphrase of the memorandum signed by Marcy; but to this Ward added four paragraphs of his own on behalf of the Garay Grant, in which he included his version of statements made to him by President Pierce in "consultation" (D.S., 19 Special Agents):

Hon. JAMES GADSDEN,
Envoy Extraordinary & Minister &c. of the United States at the Mexican Republic.

SIR, I proceed to give you in writing, agreeably to your request, my best recollection of the Memorandum handed me by the Hon. Wm L. Marcy Secretary of State, which, in compliance with his suggestion to that effect, I returned to him through the Mail, previous to my leaving the shores of the United States.

In the first place, I was directed to present to Gen. Gadsden, the letter of introduction in cypher, and to explain the circumstances, which rendered it proper in the opinion of the President, to communicate his views, by a special messenger, rather than in the usual mode, by a written dispatch. Should such a dispatch be intercepted and its contents become known to others, than the President Santa Anna and his most trust-worthy friends, (and even if to him or them,) great

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embarrassments might result, in disposing of the different questions at issue between the two countries.

I was directed to submit to Gen. Gadsden the several lines which have been considered by the President, in regard to a new boundary. The sum mentioned to be paid for either of these lines, is to be taken by the Mexican Republic in full consideration for the additional territory which may thus be acquired by the United States; and also for all damages claimed by Mexico on her own account, or on account of any of her citizens, as arising under any of the articles of the Treaty of Guadaloupe Hidalgo—of 2nd of February 1848. There may also be a reciprocal article, releasing the Mexican Republic from all damages and injuries which the United States may claim for themselves, or on account of their citizens, arising under any of the Articles of the same treaty.

For the line *No. 1*, which I have submitted to Gen. Gadsden, he was authorized to pay as high as *$50.000.000*, if he could not secure it for a less sum. The amount to be paid in instalments of $10.000.000. per annum. This line is much preferred by the President to any other; and it is deemed best for both parties, because it would form a *permanent* boundary, and be guarded and defended at much less expense than any other, and do away with the existing facilities and tendencies to border difficulties.

For the line No. 2, of the accompanying memorandum, he was authorized to offer as high as $35.000.000 payable as before. This line does not include the isthmus [*peninsula*] of Lower California.

For line No. 3, which does include that peninsula, he was authorized to allow $30.000.000, if it cannot be obtained for less;—payable in three yearly payments.

For line "No. 4", called "proposed boundary"—as high as $20.000.000—payable in two yearly payments.

If it should be found impracticable to obtain either of the before mentioned lines then the first object should be to secure an eligible route for a rail-road to the Pacific; or rather from the Rio Grande to California. Frontera, on the Rio Grande has been accurately ascertained to be in latitude 31°48′ & some seconds. A line from Fronteras due West, it is supposed would throw within the limits of the United States, probably the best route for such a road. The reconnoissance has been but a partial one; but little doubt is entertained that a boundary line on the 32nd parallel of Latitude, would afford a good route for a rail-way from the Rio Grande to the Gulf. Neither the line from Frontera, however, nor one on the 32nd parallel of latitude would afford a good boundary. But if no other can be obtained, Gen. Gadsden is authorized to offer for either of them, as high as *$15.000.000.*

The sums mentioned are the maximum points respectively; and in each case it was intended that a release from all claims under the Guadalupe treaty, as well as the entire abrogation of the Eleventh article of that Treaty, should be secured. Gen. Gadsden was left at liberty to modify to some extent, should he find it necessary, any one of these lines—keeping in view the ends which his Government has, in securing a new line. One of these modifications was mentioned: which was, a deflection of the new line as proposed, from the point of the 111th Meridian of Longitude, so as to pass by a near line to the Rio Gila. This might procure an uninhabitable boundary but it would give an awkward contour, and deprive us of all chance for a Port on the Gulf of California. Any considerable change in line, would involve of course, a corresponding change in the amount to be given.

It was believed that the present doubtful and distracted state affairs in Mexico, would not permit a protracted negotiation; and it was not therefore deemed expedient, to press upon the attention of Gen. Gadsden, any other of the open questions between the two countries—or embrace any other in this special dispatch, except those of boundary and the reciprocal claims which have arisen under the present treaty of peace and limits.

The foregoing is the spirit at least, and as nearly as can be recollected, the words of the Memoranda of instructions confided to the undersigned to be communicated verbally to Gen. Gadsden. I am constrained however, by what I learned are the views of the present Government of Mexico, to add, that I am *fully satisfied* it was not the intention of the President of the United States, in neglecting at this time, specific instructions upon the other open questions of difficulty

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with Mexico, to preclude Gen. Gadsden from the exercise of a reasonable discretion, in making a treaty adjusting *all* these questions now pending between the two countries. In truth, it appeared to the undersigned, that this neglect arose more from a want of time on the part of the President in dispatching a messenger in season for the sailing of the packet from New Orleans on the first of the present month, than any want of decision upon the points neglected. During the consultation in regard to these subjects, the President repeatedly stated in the most decided terms, that he had recently examined the claims of American citizens, under the Grant made by Mexico to Don Jose de Garay, and fully concurred in the conclusions of the U.S. Senate Committee of Foreign Relations upon that subject; that he was determined to support those claims in every proper form short of a declaration of war in regard to them alone, or for their specific enforcement; and that he would not recede from the position taken by the former administration in reference to the subsistence and validity of the Grant in question. He also declared his full determination to repudiate the late Treaty made by the immediate predecessor of Gen. Gadsden, *without transmitting it to the Senate*, as being alike contrary to the instructions given by the Department of State at Washington, and injurious to the interests of the people of the United States.

If, therefore, as the undersigned is induced to believe from information gathered since his arrival in Mexico, some satisfactory adjustment of this long-pending question can be reached, which will probably be acceptable to all parties concerned—it would manifestly be consonant with the views and the wishes of the President of the United States, that such an adjustment should enter into the terms of the new treaty. A settlement of this question removes the only doubt which I understood the President to entertain, as to the propriety of providing also *at this time* by treaty arrangement, for the settlement of individual American claims for damages for Mexican spoliations; as it would take from the list of those claims, the only one likely to embarrass a Commission in a proper adjudication.

It can scarcely escape the ripe reflection and experience of Gen. Gadsden, that if possible to do otherwise, to present to the American public, a treaty simply securing new territory, or a new route for a rail-way which has its rivals and will have its opponents in various forms;—in other words, a treaty looking solely to the speculative interests of our country, and paying large sums to promote them, while long-pending and real injuries of individuals, are left unnoticed and unredressed—he would not be likely to obtain either for himself or the administration at home, that unqualified approval on the part of their constituents, which every public man has a right to be ambitious of, and which Gen. Gadsden has heretofore been so successful in securing, whenever he has held a public position.

So that, in every point of view, the undersigned is clearly of opinion, if the opportunity exists, or shall be presented, Gen. Gadsden will be *fully justified* in arranging in one treaty, and at once, *all* the open points of difference between the United States and the Mexican Republic, if the settlement of the question of boundary shall not thus be greatly delayed.

I have the honor to remain, with great respect, your friend & obed^{t} serv^{t}—

C. L. WARD.

CASA DE ITURBIDE, CITY OF MEXICO, *Nov. 14th 1853.*

In his message to the Senate of April 1, 1854, communicating the foregoing letter of Ward, President Pierce wrote (Executive Journal, IX, 276):

That part of the document which purports to recite my official instructions is strictly correct, that which is avowedly unofficial and unauthorized, it can hardly be necessary for me to say, in view of the documents already before the Senate, does not convey a correct impression of my "views and wishes."

At no time, after an intention was entertained of sending Mr. Ward as special agent to Mexico, was either the Garay grant or the convention entered into by Mr. Conkling alluded to otherwise than as subjects which might embarrass the negotiation of the treaty, and were consequently not included in the instructions.

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While the departure of Mr. Ward under any circumstances, or in any respect, from the instructions committed to him is a matter of regret, it is just to say that, although he failed to convey in his letter to General Gadsden the correct import of remarks made by me anterior to his appointment as special agent, I impute to him no design of misrepresentation.

Ward's advocacy of a great indemnity for the Garay Grant was a sore trial to Gadsden; Ward's representations led to an "unofficial interview" between Gadsden and Santa Anna on the question of the two grants; the views of both are set forth in Gadsden's private despatch of November 20, 1853, the relevant portions of which follow (D.S., 18 Despatches, Mexico):

I despatched Mr Bowes [1] after some labor: with all his documents: with other Public papers in time for the Steamer of the 22d and he will explain how other documents but of no great importance could not be prepared in time (under the office pressure on me— As there is a rumor that the Steamer for 22. Cannot leave before the 23 or 24—I have pushed with the papers alluded to and now accompanying; and avail to write you my usual private lucubrations— I wrote the President a long letter [2] by Mr Bowes: & particularly in relation to the introduction & settlement of private claims in any satisfactory arrangement I may be fortunate enough to make on the difficulties originating in the Treaty of Guadalupe & for extension of Boundary— What are usually denominated monied claims of private Individuals such as are provided for in the Treaty of Guadalupe: I was induced to believe could be embraced in any Treaty of Settlement which could be concluded— But Claims & Grants of Greater magnitude, such as the Teheuntapec Right of Way, were very Embarrassing— This Government was committed against the recognition of the Garrary—& in favor of the Sloo—& could not be induced to recognise the former without the repudiation of the latter & for which they had received a large consideration— In granting the latter, they had to go through the previous process of repudiating the Elder— Having repudiated, and somewhat obstinate in their right to do so: you perceive the difficulty of getting on a platform by which indemnity for the wrong enflicted should be awarded— This difficulty was enhansed instead of relieved by Mr Ward: who instead of lowering down the pretensions and extravigant appreciation of the *Grant & indemnity;* magnified them 5 or 6 fold beyond what I am satisfied the President could even be induced to entertain— For though Santa Anna justifies the repudiation: having however nothing to do with it: he would be startled with a suggestion to pay 5 millions (Mr Wards indemnity) for what his Predecessor sold for 600.000 dollars: & which was the consideration which tempted the Mexican Government then in the ascendant to do the act of asserted injustice to Garray & Claimants under him— I have in all my communications informed you: that *money: & money* alone would be the sole inducement, on the part of Santa Anna to relinquish Territory & dismember further the Mexican Republic— If however of the sum which we are willing to pay him for the *lesser session* (the only one I feel sanguine about: & which is very liberal: 5 millions is to be deducted for the Cormorant appetite of Ward & Co. & some 3 millions for legitimate & urgent private claims—we might as well abandon all efforts to reconcile Higher objects if: if Private Grants with extravigant profits: are to be considered paramount objects— Indeed to hear Mr Ward talk: and seemingly under the confidential cloak of a private Messenger. You might suppose that my Mission—was for the Garray grant. if not at the sacrifice of higher claims: at least so to be connected as to render the recognition or adjustment of the latter indispensable with the former.

I fear the whole of this Mission or Messengership originated in a Mistake or misconception of my communication, asking for the *instructions* on *private Claims*

[1] Charles E. Bowes was a Special Agent sent to Mexico in connection with certain claims (see Wriston, Executive Agents in American Foreign Relations, 835).

[2] Not found.

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promised in your first *letter of General Instructions*—and in which you intimated the embarrassment of the Administration growing out of the Sloo grant & recognition under my Predecessor— I thought I had penetrated Your views therefore in studiously avoiding even attending to that Grant (which had in the past held too prominent a position in our relations with Mexico: and had seriously interferred in my opinion: with the higher affinities with this Republic— In one of my first Communications, though hastily prepared on early impressions, I adverted to Private Claims and their indiscreet advocacy by those who have preceeded me in this Responsible Mission: as the fruitful source of the distrusts which existed between Two neighbouring Republics, whose interests it was to harmonize— Indeed they were paramount by the Record: to all those national friendly Relations (and often disturbing them) which it was the object of a Mission to preserve— But to return to the Teheuntepec: (the King of these claims) Mr Ward's interviews and verbal communications; which are emphatic to the point that the President has not received the Sloo Grant as a Substitute: of the Garairy and will not approve of the Convention made by Mr Conkling as a substitute: I was encouraged or induced to have an unofficial interview with the President on this vexed Question: a detail of which is in my letter to the President— From that you will see that Santa-Anna; says he had nought to do with the substitute— But that he came into power under the assurance: that the Sloo Grant was made to superceede the Garairy—at the instance of those, including My Predecessor that it would be acceptable to the U States: as Satisfactory for all the interests manifested in favor of that Grant, & that hence he had supposed that difficulty *settled* & in harmony with the U States— Though he seemed to think that however justified was the repudiation (for non fulfilment of conditions) of the Original Grant; yet that if the US. rejected the substitute made as an attonement; that the Question would be and might be reopened: I have concluded to give Mr Ward the benefit of an official communication [1] That the President has not approved of the Convention in favor of the Sloo Grant: or recognized that Grant as a superceeder of the interests the Government of the U States have taken in favor in the past of the original grant to Garary— If on that, Mr Ward or the Representative of the American interests in the Garay Grant can get a recognition or renewal of it by the President; repudiating the substitute by both parties I will accord to the arrangement— I have gone into this detail that the Administration may not commit itself on the Sloo Claim (now openly avowed as having been transferred to a British Claimant; in order to meet obligations to British Subjects) encurred in paying for the Grant— As those payments were made here, under the assurance from My Predecessor; however unauthorized, that the convention was made with the approbation of the US Government: I have exacted or will exact that those Bankers be protected, not in acknowledgment that the Government is really responsible or feels themselves so; but to relieve of the Mortification that a Minister should have so committed his station or position in behalf of a Grant & the Grantees as to have made his high place subservient to their speculations— By these details you will understand my views: and that they are maid that you may be prepared for *possible* arrangements on this vexed subject, which might otherwise interfer with higher aims— I feel sensibly my Reponsibilities— I think that my views are in harmony with those that prevail in the Cabinet & if my judgement has failed the Administration which it is my object to represent must extend the usual indulgence for honesty of purpose at least—

In relations to Historical incidents in this quarter where it is so difficult to obtain facts I have only to report my convictions that things remain as they were; full of speculation & uncertainties— The President I think is more pacifically disposed to the US. but from necessity— Has awakened to the truth that he can only rely on us to sustain himself in power— He is evidently still distrustful— Arrests & banishments of suspected Individuals of Power Continue—and though without means to maintain; his ambition for Ulterior designs, which he dreams of in his seclusion, is for a Military Power— His progress in raising recruits is slow: and his Embarrassments thicken on him in early appoint-

[1] The reference appears to be to the relevant portion of Gadsden's note to Bonilla of November 29, 1853, which is printed below.

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ing Officers for the Army he desired to raise— Hence in walking the streets of Mexico you would estimate a force (from the officers) of 15 to 20000 men when, not to exceed 4000 can be paraded— . . . I am to present my Budget to the President [Santa Anna] next week based on the 4 propositions of boundaries— I have to put my Engineer Antecedents [1] in requisition, as the President requested that Each Boundary proposed should be accompanied by a map to avoid the confusion of all on the Same This scrawl has been written in great haste to be prepared in time for the mail now on the eve of closing

In considering Gadsden's difficulties with Ward it is to be remembered that weeks before Ward arrived at Mexico City Gadsden was committed to a global treaty adjustment between the two countries. The opening words of the "Memoranda" presented to Santa Anna on October 2 (printed above) evidence this; also on October 17 (in his quoted despatch No. 10) Gadsden wrote: "I have conveyed my assent to an adjustment of all the disagreements between the Two Governments in one Treaty", giving as his reason that he knew this to be "in harmony with the policy of the President"; and that Gadsden well understood that such an adjustment necessarily included the Tehuantepec question is clear from his suggestion for the reconcilement of the interests in the two grants, made in his private despatch of October 3 (quoted above).

The record of the instructions to be transmitted by Ward makes it equally plain that the only claims against Mexico which it was desired at Washington to release were those "arising under any articles of the Treaty of Guadalupe Hidalgo"; it is also therein expressly written that it had not been deemed expedient to complicate the negotiation "with any other matters than a change of boundary, and the reciprocal claims which have arisen under the present Treaty of Peace and limits"; this would have left open all questions under the two Tehuantepec grants; and after the date of the treaty but before he knew of its signing, Marcy wrote [2] (D.S., 16 Instructions, Mexico, 442–45, January 6, 1854, in full in Manning, *op. cit.*, IX, 156–57):

I am apprehensive that the persons interested in the two Tehuantepec grants have agents in Mexico who have extraordinary facilities for getting information, and will use all possible means to have such a turn given to the pending negotiations as will forward their respective interests. It was the apprehension of embarassments from this source which induced this government to disconnect the negotiations you were to conduct, from these grants. I trust you will be able to surmount all the difficulties which have arisen or may arise from this cause.

Gadsden, however, was committed in advance to a negotiation embracing *all* differences; he naturally felt bound (by the cipher instruction) to take what Ward told him as coming from the President; though an indemnity for the Garay Grant was not within the recorded instructions of Marcy, some adjustment of the question was quite in line with the position which Gadsden had taken, both with Santa Anna and in his communications to Washington; it was the demand of

[1] Gadsden had begun his service in the Army (1812–22) as a lieutenant of engineers.

[2] See also his instruction of December 22, 1853 (printed below), which is very precise as to the American claims that he intended to have dealt with in the treaty.

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$5,000,000 to satisfy the "Cormorant appetite of Ward & Co." that was staggering.[1]

After a "lengthy conference" with Gadsden (on November 26 or thereabout; the exact date does not appear), Santa Anna decided to appoint Plenipotentiaries for the negotiation. In anticipation of formal notification to that effect, Gadsden under date of November 29 wrote this long note to Bonilla, part of which Gadsden styled "a chapter from President Monroe's Manifesto" (D.S., 18 Despatches, Mexico, No. 15, December 4, 1853, enclosure):

The Undersigned Envoy and Minister from the United States of America: after a delayed response for some months: to propositions to arrange the existing disagreements between the two Republics, with gratification, though in some degree disappointed, has been informed that His Excellency will be prepared in a few days to nominate Commissioners, with full powers, to adjust the amicable relations between the countries on *one* of the Five Propositions, with explanatory maps, which has been submitted to the Supreme Government of Mexico[2]—

The Undersigned has however to express his deep regret, in consideration of a policy which was more strongly recommended to the United Mexican States than to those of North America which he represents— That Proposition N° *one* defining a natural Territorial Boundary, imposing in its mountain and desert outlines, and which would settle permanently all border issues existing and

[1] In the treaty as signed, the private interest represented by Ward fared well enough, for the sum of $5,000,000 was allocated for American claims, with express mention of the Garay Grant; but of those advantages nothing remained in the final text.

At a later date Gadsden wrote bitterly of the designs of Ward; this is from his unofficial despatch of July 11, 1855 (continued on various dates to July 17; D.S., 19 Despatches, Mexico):

> the interference of Mr Ward & Escandon in the late treaty, with a view of casting me under the influence of the latter— Had I not penetrated the designs of that interest there would have been a provision in the Treaty for 3 millions of indemnity to Hargous on Tehuantepec: in which Escandon, Santa Anna, & possibly Ward would have participated— I saw a letter of Wards to Bonilla (which shows he had profited by a brief residence here:) when he found that Bonilla (as Commissioner) and not Santa Anna was to be influenced— These details of history are necessary to put you on your guard against influences: which would have misled me: had I not at an early period discovered the private deplomacy, to affect public interests— I have thus exposed myself to a private opposition, which has gathered strength by the impression, that the Public are led to believe that the President secretely disapproves of my Course: and only awaits a more favourable occasion to publickly manifest it—

[2] It seems plausible to suppose that the "Five Propositions" were those of the recorded instructions of October 22, 1853 (printed above), namely, the four numbered lines and the final alternative of a line from 31°48′ (or 32°) on the Rio Grande; but it is more likely that Gadsden did not suggest the line of 31°48′ (or 32°) at all; see his objections to such a line in his despatch No. 4, of September 18, 1853 (quoted above); the four numbered lines might easily have been made into six propositions by drawing No. 1 *without* Lower California and No. 2 *with* Lower California. Copies of the maps accompanying Gadsden's propositions are not available; perhaps there were only three maps, for it appears from this note of Gadsden that the line of proposition 5 was drawn in blue on map 3.

The archives of the Embassy at Mexico City for the period beginning with the arrival of Gadsden and ending on January 4, 1854, include no maps, no memoranda of conferences, and no correspondence between Gadsden and Christopher L. Ward (D.S., file 026 Treaties/2146, despatch No. 6884 from Mexico City, dated June 21, 1938).

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which may arise in the future, had not been accorded to, As the basis of negotiations now to be consummated— Recent transactions against which His Excellency, in anticipation, so Justly and so frequently remonstrated, and which the Government of the United States with all its solicitude and with all the vigilance of its Public authorities, has not been able effectually to arrest; and the issue of which as instigated alike by Citizens of the United States States in cooperation with individuals of all Nations, embarking from California, and thus erroneously registered as the Citizens of a neighboring Government no one can foreshadow— They may at this time be in possesion of one or more of the disaffected States of this Republic or may have been but temporarily discomfited, though not subdued— These occurrences, and so long threatened, without an ability to avert, it was hoped had awakened the Supreme Government of Mexico to the influence of a spirit *internal* as well as *external* the attempt to check or impede which, was only to be recognized in that *political and harmonious policy* by which the Government of the United States, however reluctantly, was willing to incur the responsibilities and burthens it imposed— Cautioned, if not admonished, by the past success of a popular progression, which receives its impulses, from the enlightenment and advancement of the age, and which gathers strength from opposition, The Undersigned had confidently relied on being met by a corresponding desire or policy on the part of the Supreme Government of Mexico, to conciliate and harmonize, what was not to be diverted; overawed or crushed— Whatever may be the influences of a policy so strongly recommended: and so well calculated to remove, and forever, all irritating causes of Border differences; Stimulated alike by the citizens of both countries: A spirit of agrandizement has had no motive in instigating propositions; transferring high Governmental responsibilities, which the United States would gladly avoid; but which were presented in all that friendship and candor of feeling, which it was hoped would have met with a cordial response from the other side— To distrust a neighbor: or to suspect covert designs of Territorial agrandizement; in an unconcealed policy, which so strongly recommended the extension of domain to a well defined natural and approved limit between two neighboring States; is a diplomatic motive to arrest, that which an unerring destiny has made inevitable— To accept the proffered assistance of other powers: or to seek their cooperation, (as there is Just reason to beleive has been done) to put down the irregular designs of Foreign Individuals because American; in concert with the citizens of the Border Mexican States; whose sympathies and affinities are daily inclining to a more Northern Republic: will only prove the more animating to those: who Justify to the world their denounced aggressions; by the alluring invitations from bretheren, who claiming the favored Land of promise; are willing that others should share and possess— The precipitancy with which a charter for a Rail Road was recently granted to a British interest; in the face of a decree inviting within a limited and unexpired period; the most favorable offers from Citizens of all nations; who might be induced to embark on the enterprize—The provisions of that concession: which expose the foreign influences, and considerations for thus avowedly excluding; after public invitation, all participation in the work by citizens of the United States—The anxious endeavors now maturing to transfer concessions made to A G Sloo and his associates to British control; and in the face of an appeal, that this grant was a courteous concession from the Supreme Government of Mexico in substitution of the Elder to Garay—The fact that the repudiation of the latter, was not decreed untill the proprietorship was in the hands of American Citizens: and after the British Minister refused to foster and protect the enterprize, when under the control of a british Subject; are all indications of motives adverse to American interests; and more calculated to stimulate the desire to possess and to advance; than to check a spirit of adventure, which seems to be so distrusted, and so full of dreaded apprehensions; as to invoke the assistance of Foreign interposition— The Government of the United States is popular in all the stimulating elements of its political structure— The irregular: and to be regretted expeditions from its shores; whether composed of its own citizens; or of those who abuse the protection extended them, interfereing with the intrernal polity and management of other countries; will ever become respected, and controling influences in the Government, whenever those hazardous adventures, on Individual responsibility, are in accordance with the spirit of the age, and the

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institutions which regulate, and rule at home— That spirit however erratic: and impatient, only precipitates coming events; (the bow in the East) which are not to be overawed or subdued by an impolitic and ineffectual resistance, from which it only derives additional encouragement: but from a more advised policy which conciliates, and legitimatises— The Government of the United States, in a wise forecast will ever prefer, at any cost, the legal and pacific appliances: anticipating inevitable results: to the having of these forced on her by the irregular and unlawful proceedings of ardent and impatient individuals— The latter comes in conflict with order, and law, which it is the interest and duty of all nations to preserve at home, as well as abroad— Treaties are but the Supreme Statutes between nations and the far reaching mind of a prudent Statesman: will anticipate outbreaks, in preference to abide the time and necessity of subduing them— By this process and policy they make the law: which those who are the violators of law and order, may force on a Country, through a carrier of insubordination, and irritations which no power has been able to arrest—

We have had presented recently an instructive admonition in a neighboring Island of the Antilles— The fate of the ill advised expedition of Lopez (apart from the inhuman retributions which fell on the deluded victims:) met with little sympathy in the Northern Republic— The annexation of Cuba while opposed at that crisis in one quarter of the American Union; was a subject of indiference to an equally powerful section in another (which was supposed to be most favorable) has now become the predominent sentiment of the whole Union— Stimulated by the suspicions of Foreign attempts to influence adversely the counsels of Spain; and to interfere with the domestic policy of the Island— To such an extent have these suspicions stimulated the People of the United States to annex Cuba, as one of the confederation; that the British Minister at Washington, has found occasion to disavow any such designs of interference, on the part of the Enlightened Queen, he with so much ability and courtesey represents— The Gifted Premier of Great Britain: who with a searching and far reaching sagacity: penetrates and profits: from the tendencies, and the advancement of the age: would be foremost to reprove an attempted interference in the relations between the Two Contiguous Republics of North America, and particularly on an occasion; when the earnest endeavors of both, are invoked to reconcile on the basis of mutual confidence; and fraternal neighborhood; existing and disturbing border derangements— It is in the sincerity of this friendly spirit, that the Undersigned desires to meet the Commissioners on the part of the United Mexican States, feeling assured that a corresponding response, on their part, can alone ensure a favorable consummation of the negotiations now about to be entered on— The Undersigned had therefore cherished the hope: That the supreme Government of Mexico: deeply impressed and influenced by these considerations, would have appreciated the candor, and the motives, which on all occasions, have been manifested on the part of the United States, to arrange the friendly and neighborhood relations of the two Sister Republics of North America, on a basis so undisturbed and immoveable, as not to leave open, for future issues, a repetition of Texan history in the six border States including South California— Though the Undersigned can scarcely now hope, that the Supreme Government of Mexico will reverse its determination to treat on any other basis of territorial limits than that embraced in proposition Five (5) with the lines of demarkation in color blue in map Three (3) He accepts of this selection, but with the sincere and honest declaration, which the occasion demands; That no Treaty on those limits can prove other than a temporary expedient to reconcile existing differences; while the disturbing causes of probable border feuds remain unremoved— Indian disturbances and fourays on the Mexican border States at home; and incursions from abroad, will continue unrestrained— Savage alarms and depredations will multiply:—The sparce Mexican population, incapable of self protection: and unsustained by emigration; which a mistaken policy prohibits, will increase in disaffection; and each State on every favorable occasion, will successively pair off: from a nationality, to which in the past they have paid a willing allegiance: to seek new alliances with a Northern Neighbor: for which natural and political affinities are presenting daily attractions

In accordance therefore with His Excellency's invitation to confer with a Commission: on a basis of adjustment accepted; it will be both important and

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appropriate to present in advance what are the immediate, and existing disagreements now to be reconciled— These have their origin in the adverse interpretations which have been given to the 5th 6th and 11th articles of the Treaty of Guadalupe Hidalgo— Justly repudiating, as the United States has done; the demands for indemnity to Mexican Citizens: for Indian Spoliations made under the (11th) *Eleventh Article*—objecting as the United States has in reason: to the actual nullity of the *sixth* article and to the erroneous defining of the (5th) Fifth article, it has been proposed to reconcile all these misunderstandings: in the spirit and intent of the (21st) *Twenty First* Article: by an abrogation of the *Eleventh* (11th) article: and by an extension of the boundary, so as to embrace all the objects which were contemplated: and which in good faith, it was supposed on the part of the United States, had been, and were embodied in the provisions of the Fifth (5th) and Sixth (6th) articles— His Excellency will hardly contend, that the right of way for a Rail or Military Road, conceded in the Sixth (6th) article could, in accordance with its spirit; be made a *nullity* or *abortion* from a *restriction*, which must have been unintentional, as defeating what the U States beleived had been granted:—or that a boundary defined by the Fifth (5th) article was to be narrowed down and restricted, by a decision of one of the parties; and in a mode and manner; not recognized or sanctioned by the provisions of the Treaty—To ascertain and determine the *agreed line*, as defined and understood by the opposite party—

The other unhappy disagreements are in the private claims of American Citizens: which it is desirable and important to adjust with the other differences originating under the Treaty of Guadalupe— Prominent among these, is the Tehuantepec Right of Way, conceded by what is known as the Garay Grant: which was legitimately transferred to American Citizens: and acknowledged to have been parted with, at the Treaty of Guadalupe; when propositions were made by the Commissioner of the U States to include, for an *adequate compensation*, that right of way: in the negotiations then pending between the Two Governments— Confiding, in good faith in the declarations then made on the part of the Mexican Commissioners: an interest in protecting the said Grant legally transferred to Citizens of the U States, and in process of prosecution, was early thereafter manifested on the part of the Government, which owed them protection

A Convention [1] for said purpose was entered into between the two Governments: and in perfect good faith on the part of that I have the responsibility to represent but without cause or Justification, was actually repudiated afterwards, by the then existing Government of Mexico— As the convention made subsequently by Mr Conkling, recognizing the Grant to Sloo and associates, was without authority: has not been recognized by the President of the U States, is about to be transferred to British interests; and cannot and will not be received as a substitute for the Garay; the proprietorship of which remains with Citizens of the U States: the interest of the Government of the U States in the latter concession remains unchanged, and unimpaired: and it is therefore confidently expected that the Grant will in Justice be confirmed to the American Assignees under Garay: so that the noble enterprize, originating with: and projected by His Excellency the President; will be permitted to be prosecuted under the first auspices; as a monument to the Patriotic spirit, and far reaching sagacity, which first conceived it— With this there are unadjusted private claims of Citizens of the U States to a very large amount; which have originated since the Treaty of Guadalupe, and which are not, for the first time, now brought to the consideration of the Supreme Government of Mexico— It is proposed that all these disagreements originating under the Three (3) articles of the Treaty of Guadalupe, to which reference has been made, be reconciled by an extension of Boundary to be agreed on: and an adequate Sum to be paid for the same, including the relinquishment of all obligations under the (11th) Eleventh Article—That the Garay Grant be confirmed to the present American proprietors; or any appropriate indemnity be paid for the damages and losses sustained by the repudiation of it—and that an adequate sum be allowed for the U States assuming all the unadjusted private claims of American Citizens against the Government of Mexico— To prevent misunderstanding it has been deemed appropriate and

[1] Signed at Mexico City January 25, 1851 (D.S., Unperfected I2).

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important thus, in advance, to state what are to be the subjects of negotiation with which the Commission is to be charged: so that the Commissioners on the part of the United Mexican States, may be as well prepared: and as favorably disposed, to confer on and to adjust the same to the satisfaction of both Governments as is the Minister who will represent the interests of the United States

The Undersigned cannot conclude this preliminary note on the settlement of the existing disagreements between the two contiguous Republics: whose interests are to be reunited by the Stronger ties of Fraternal neighborhood: without repeating the hope that His Excellency will maturely reconsider the Five (5) propositions, which have been presented on the part of the U States, and empower the Commissioners to be nominated on the part of the United Mexican States, to negotiate on the basis of either of them: but more advisedly on Proposition Nº one (1) with the strong, and unchangable natural boundary designated in Color green: in Map Nº one (1) as the only limit or demarkation: between the two Republics of North America: which will not only conciliate existing disagreements but remove all causes of future border dissentions— A Limit, which will most effectually check all further desire for expansion on the part of all Citizens native and adoptive of the U States—which will receive from Mexico, such States only as are desirous or willing to be transferred to another Jurisdiction; and which are now a burthen and expense to Mexico—Which will impose those Governmental responsibilities on the U States, with all the expense of protection and of preserving order, where desolation, depression, and anarchy are said now to prevail: and to be on the increase; and which would enable Mexico to consolidate her strength in the older, more populous and richer States, retained: and thus to receive a new impulse in the career of modern advancement— The two great and neighboring Nationalities; of vast internal capabilities; would present a new spectacle of noble rivalry and improvement in the science, and the arts of productive industry; unembarrassed by those border feuds which in the past, interrupted neighborhood tranquility, and which must continue to do so; while the natural boundaries which mark the appropriate, and enduring limits of nations, are unadjusted as nature and an enlightened policy would seem to define; and to so strongly recommend— With renewals of high consideration and regard

Gadsden's note of November 29 was deemed very offensive and was not answered; it was characterized by Bonilla in an instruction to Almonte of October 3, 1854, as "nothing more than an insult to this Government, to this nation, and to the whole Spanish race" (D.S., 7 Notes from the Mexican Legation, translation with note of Almonte of October 23, 1854; Manning, *op. cit.*, IX, 171–74); in that paper the Mexican Minister of Foreign Affairs set forth at some length "the just grounds of complaint" against Gadsden, whose recall [1] was requested. The reasons of Gadsden for his note of November 29 are thus given in his cited despatch of December 4, 1853 (printed in part in *ibid.*, 677–78):

The order for a Commission to meet and negotiate on the existing disagreements between the two Countries: was after a lengthy conference with His Excel-

[1] Requests for the recall of Gadsden continued to be made during the regime of Santa Anna and thereafter (D.S., 8 Notes from the Mexican Legation, May 14, 1855, from Almonte, and May 9 and June 27, 1856, from Manuel Robles Pezuela, the successor of Almonte; Manning, *op. cit.*, IX, 767–69, 832–33, 838–39). On July 2, 1856, Marcy wrote to Robles that "measures will soon be adopted with the view of complying with the wish" of the Mexican Government (D.S., 7 Notes to the Mexican Legation, 78–79; Manning, *op. cit.*, IX, 206); Gadsden had been informed of his recall on June 30, while he was in Washington (*ibid.*, 205); he returned to Mexico City and was succeeded by John Forsyth, of Alabama, who was appointed Minister to Mexico on July 21 and reached Mexico City on October 15, 1856.

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lency the President— I deemed it advisable therefore to anticipate the notification of an appointment of a commission by a communication with my acceptance of the invitation to meet the same; which you will see in correspondence R— You will consider my Statement of disagreements to be adjusted: and the remarks on the policy which has influenced the U States on the basis of the Treaty to be concluded with the animadversions on foreign interference, very appropriate as a preamble on this occasion of negotiations to be entered on— That there has been an interference in the private parlors of the Palace on the relations between the two Sister Republics, and an anxiety evinced to stimulate the distrust on the part of Mexico: to the institutions and the policy of the U States—I have every reason to more than suspect— It was considered advisable therefore to read to the Representative of the Government with whom I was about to treat a chapter from President Monroe's Manifesto: and to enlarge on the liberal policy of a progressive and enlightened age: on which I had found myself called upon, in a previous correspondence (Q) to make reference— There is certainly a disposition in those who now control in the councils of this Supreme Government (and encouraged by concealed foreign influences,) prejudicial to the institutions: and policy which rule in the U States— We have little to hope from either the *Justice* or *intelligence* of the Minister of Foreign Relations: who is at the head of the Commission nominated to treat with me: and his appointment is an evidence, at this crisis, of the influence he exercises over the President— I look therefore to a more protracted negotiation than was at one time anticipated: when I had expected to treat with the President direct: still the conferences had with him have proved favorable to a progress thus far, to some satisfactory termination of the disagreements between the two countries— Patience will be necessary: for at this time The President and the cabinet: think and dream only of the Dictatorship, with the Empire, which is to follow

Regarding the appointment of the Mexican Plenipotentiaries and the time and place of meeting there was this formal correspondence of November 30 (Bonilla to Gadsden, translation) and December 2 (Gadsden to Bonilla), which is also with the last-cited despatch:

Confidential

NATIONAL PALACE,
Mexico, November 30, 1853.

To His Excellency Mr. JAMES GADSDEN,
Envoy Extraordinary and Minister Plenipotentiary of the United States of America.

The undersigned Minister of Foreign Relations has the honor to address himself to His Excellency Mr. James Gadsden, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, to inform him that, His Excellency the President of this Republic having taken into consideration the very urgent request made to him by His Excellency relative to the portion of land needed by the United States for the construction of a railroad on the northern frontier, and the President being desirous of granting that request so far as it may be compatible with the security, independence, interests, and rights of Mexico, and at the same time considering that it is not proper nor fitting that a matter of this nature be negotiated directly with His Excellency, has seen fit to appoint a Commission composed of the undersigned as Plenipotentiary *ad hoc*, of Messrs. José Salazar Ilarregui [1] and Mariano Monterde as Expert Commissioners,

[1] José Salazar Ilarregui was Surveyor for Mexico under the Treaty of Guadalupe Hidalgo, was one of the three Plenipotentiaries of Mexico who signed the Gadsden Treaty, and was subsequently Boundary Commissioner thereunder. In publications printed in the United States the name "Ilarregui" is to be found in a variety of forms.

As written in the signed original of the Gadsden Treaty (preamble), the spelling appears to be "Ylarregui" in the English version and "Ilarregui" in the Spanish; as written in the Mexican instrument of ratification it appears to be "Ylarregui" (preamble and indicated signatures); as lettered in the titles of the boundary maps

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and of Mr. Lucas de Palacio as secretary, conferring on the first three the necessary powers to negotiate and sign with His Excellency the agreement which is decided upon.

Accordingly the undersigned has the honor to inform him that, beginning with the 5th of December next, when the correspondence of the English packet shall have been attended to, the said Commission will be ready to meet with His Excellency at the place and on the day which he may indicate to begin their conferences, at the same time placing at his disposal the premises of this Department, if he should consider it convenient for the purpose indicated.

The undersigned renews to His Excellency his very distinguished consideration.

MANUEL DIEZ DE BONILLA

LEGATION U STATES
Mexico Decembr: 2d 1853.

To His Excellency
MANUEL DIEZ DE BONILLA

The Undersigned Envoy Extraordinary, and Minister Plenipotentiary from the United States: has the honor to acknowledge His Excellency's communication of the first of Decembre [*November 30*]: advising, of His Excellency the President: having associated Don José Ilarregui, and Don Mariano Monterde: as Commissioners with His Excellency Manuel Diez de Bonilla; Minister of Foreign Relations: Don Lucas de Palacio to act as Secretary: to confer with the Representative on behalf of the U States on the preservation of the most pacific relations between the two neighboring Republics— The Undersigned with his Secretary John S Cripps Esqr will cheerfully meet the Commission of which His Excellency is the head: on any day which may be named after the fifth of the month, as has been proposed, and in the apartment in the palace which has been appropriated for the accomodation of said commission— The Envoy and Minister on the part of the U States avails of this occasion to invoke on the counsels of this Joint Commission charged with the high responsibilities of preserving the peace and friendship between two Neighboring communities: a spirit which will guarantee that happy consummation on a foundation so strong and enduring as not to be disturbed or interrupted in the future

With renewals of high consideration

JAMES GADSDEN

The Plenipotentiaries held six conferences, on December 10, 16, 22, 23, 24, and 30, the last for the signing at the American Legation of the terms agreed to on December 24; the conferences were protocoled; and for those of December 10 and 16 there is also this report in Gadsden's despatch of the latter date (D.S., 18 Despatches, Mexico, No. 16, excerpt):

In reference to contents Nº 15 I have only to report that the Joint Commission on the part of Mexico, and of the United States, had a meeting on the 10th Instant: at which the respective powers of the Representatives of both Govern-

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under the Gadsden Treaty, it is "Ylarregui". In examples of the original signature the initial letter appears to be *Y* rather than *I*.

Relevant in this regard is the following from Gramática de la lengua española, nueva edición, reformada (Madrid, 1928), page 523 (translation): "It is a bad practice to use as an initial letter, in handwritten material, *Y* instead of *I*. So one should write not *Ygnacio* or *Ysabel*, but *Ignacio, Isabel.*"

In four Mexican treaty collections, all of them official publications of the Government of Mexico, the spelling of the name is consistently "José Salazar Ilarregui" (Tratados y convenciones concluidos y ratificados por la Republica Mexicana, 259, 263, 267; Tratados y convenciones vigentes, 1904 ed., 26, 31; *ibid.*, 1909 ed., I, 256, 261; *ibid.*, 1930 ed., I, 161, 163).

Except in quoted matter, the spelling used in the present publication is "José Salazar Ilarregui".

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ments were exchanged and recognized— The Conference was opened with my presentation and with the acceptance on the part of the Mexican Commissioners of a projected Treaty carefully drawn up and reconciling in the most liberal Provisions all the disturbing issues between the Two Governments and for which in behalf of the U States a most adequate consideration was offered— The Instrument was received for examination, and on this day the American Envoy and Minister was invited to another conference— The result was as anticipated a most extravigant appreciation of the Cessions and grants negotiated for and which were encouraged by communications from the Mexican Minister at Washington professing to know the extent to which the American Minister was authorized to advance in payment of the concessions to be made, and that if he offered a less sum and the Mexican Commissioners insisted on the larger, for the domain alone, it would be acceded to and that an indemnity for Indian depredations could be negotiated, for and with more success through Gen Almonte at Washington— The influence of this recommendation was very apparent in the conferences of this day in which a most extravigant value was placed on the domain alone *more than double the sum* I *had named* in consideration of all the grants, and relinquishments to be made in the Treaty proposed— There was evidently a covert design throughout the whole conference to seperate the questions at issue and to divide the consideration to be paid, for each, estimating for the land alone (with some unexplained restrictions on the boundary indicated) at more than double the sum, I had offered for all, though this amount influenced by the last advices received from you, had been made much more liberal than my Judgement had originally sanctioned— The attempt at diplomacy during all the discussions and the extortionate pretensions for a Territory alone (full half of the only valuable portion of which has already been parted with to Private Individuals) would have prompted me to close all negotiations, met with a spirit so adverse to equitable adjustment; had not another interview been sought, so as to afford the opportunity of reexamining Maps and revise an estimate of the quantity, quality and appreciation, which the Mexican Commission had placed on a worthless Domain alone— These proceedings after the preliminaries of the basis, on which we were to treat, had been accepted and acceeded, to, and stimulated evidently by influences from Washington, do not accord with the assurances you have so frequently received in that quarter, that the Supreme Government of Mexico was anxious to settle all existing issues on the most reasonable and friendly terms— Up to the last week that spirit apparently prevailed, and the progress of negotiations to a favorable termination, were very encouraging to this Legation— The sudden change in the disposition of the Mexican Commissioners is only to be explained by the recent despatches from the City of Washington, which (there is every reason to beleive) have been influenced by a deep speculation in Embryo in most fraudulent claims to a large amount for Indian depredations, encouraged by the hope that they may be imposed on the U States, with greater success, at Washington than at this Capital, as it is well ascertained that I have in all my correspondence with the Minister of Relations boldly repudiated any obligations on the part of the U States to pay an indemnity for Indian depredations committed on Mexican Citizens— This repudiation was sustained by arguments and Just interpretations of the 11th Article of the Treaty of Guadalupe (on which the claim has been raised) and which the Mexican Minister of Relations has not been able successfully to rebut— It has been strengthened by more recent additional evidence, that most of the depredations committed were by Indians residing or encamping within the Mexican Territory, on Haciendas which had been abandoned and thus invited attack, and on a people who had been disarmed and to whom little or no protection had been afforded by the Government who owed it to them— If the Government of the U States admitted the obligation to pay for all the depredations committed by the Indians whose incursions they were bound to restrain not one third (⅓) of the claims submitted could be proven or sustained, before any Court of adjudication either as to the legitimate amount of damage suffered or as to the party who inflicted it— I have had the opportunity of inspecting some of these claims carefully prepared under decrees or circulars, from the Minister of Foreign Relations, and verified by the second officer of that Department, that did not contain any legal evidence of the fact of depredation beyond

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the oath of the suffering party or as to what Indians were responsible— The amounts of losses in the estimation were more than preposterous, and among some of the items were annuities charged by Proprietors for having abandoned their Haciendas, and property, which thus unprotected, invited depredation without any evidence as to who may have committed it— In a country where from the number of robbers watching for prey, it is hazardous even to travel the public highways without arms; the probabilities are that these were in many instances the *disguised Savages* that plundered what was left so insecure— Could the asserted claims for damages under the 11th Article of Guadalupe be stripped of all the disguises through which they are presented, I am fully within the limit in the assertion, that not three millions in value could be sustained or recognized before any Tribunal of Legal investigation—

Only one article of the "projected Treaty" which Gadsden presented to the Mexican Plenipotentiaries is textually available.[1] In D.S., 18 Despatches, Mexico, following despatch No. 16, of December 16, 1853, are two papers (printed in Manning, *op. cit.*, IX, 681–83, footnote), the first of which is apparently a translation of an instruction (or the opening part of one) from Bonilla to Almonte, dated December 16, 1853, enclosing Gadsden's draft treaty; the other is headed "A project of treaty proposed by General Gadsden, to which reference is made in the despatch directed to the Mexican Legation", and below that caption (preceded by omission signs) is this involved, diffuse, and crude proposal for the revival of the Garay Grant and reimbursement of the $600,000 paid under the Sloo Grant:[2]

[1] Perhaps another, which is certainly by Gadsden, is this, misfiled among other papers following an instruction of December 8, 1853, in the archives of the Embassy at Mexico City (D.S., file 026 Treaties/2150, enclosure to despatch No. 7316 from Mexico City, dated September 3, 1938):

> That the two Contracting Parties shall at the earliest practical day, run unitedly a line of mail steamers through the Circuit of the Gulf of Mexico from New Orleans: touching at Cisal [*Sisal*, a port of Yucatán] on one week to New Orleans and on the alternate week from said City via Cesal back to N. Orleans. That the said Steamers shall be considered a Mixed Line under the respective Flags of M & US—and when within the waters of the latter shall carry the Flag of US at its mast head indicating its Nationality withat of Mexico on the Foreness [*foremast?*] and to be reverted [*reversed?*] when entering the waters of Mexico— That said steamers shall in conveying the mails be under the protection of both Republics and be entitled to the receprocal privileges of freedom from all Port charges and Tonnage dues: paying only the duties exacted by each country: on the produce or merchandize they transport: and that in the Ports of the Two Respective Republics: a preferred accommodation shall be awarded, for the discharge of Cargo and Passengers: and every facility extended in giving despatch to arrivals and departures.

[2] That Gadsden was the author of this draft article is not to be doubted; but when and how the two papers last mentioned were received at the Department of State is not entirely clear.

The papers in question are bound in D.S., 18 Despatches, Mexico, immediately following despatch No. 16, dated December 16, 1853, and preceding despatch No. 20, dated January 3, 1854, which consists of one paragraph of six lines in Gadsden's handwriting.

The Mexican instruction is a single sheet of paper measuring 9¾ by 7¼ inches and written on both sides; the project of treaty is a manuscript of five sheets measuring 12⅝ by 7½ inches each. Close to the inner edge of the sheets, 4¼ and 6 inches from the top, are two small punch holes, through both the instruction

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ART. 3. Another motive of difficulty between the two countries proceeds from the claims of certain American citizens in virtue of different decrees and concessions made by the Mexican Government to D. José de Garay and his representatives, with the object of opening an interoceanic communication through the Isthmus of Tehuantepec. The execution of that great work so necessary to the social and commercial interest not only of Mexico and of the U.S., but of the world at large, is seriously obstructed, if not totally stopped by conflicting rights; *and the Government of the U.S. having refused to ratify the convention relative to the reasonned concession made to A. G. Sloo and Company*, insisting in favor of some of its citizens, holders of the aforesaid concession made to D. José de Garay, and who have made great expences on account of it according to the special fulfilment of the terms of said concession, or in default thereof an ample pecuniary indemnification, the Government of the U.M.S. with the object of settling definitely this unhappy controversy, so long pending, by the present treaty does recognises and revives in all its validity, all the obligations and conditions of said different concessions and contracts entered into by the Mexican Government with D. José de Garay, for the exclusive privilege of a right of way through the Isthmus of Tehuantepec and the other rights and privileges contained in the different concessions and relative titles; and by the present treaty the Mexican Government authorises the assignees and holders of the rights afforded by said concessions, to get possession of them, as if they were accorded at the date of the ratification of this convention; and by this very convention the Mexican Government solemnly compromises itself, accordingly to the original dispositions of the aforesaid concession to sustain and protect the holders of said rights or their assignees in the possession exercise and enjoyment of all the property and privileges afforded by said concession.

In consideration that said concession and contract had in wiew to secure to the people of both countries important privileges, which can only be realized by the construction, protection and maintanance of a sure and adecuate way of transit through the said Isthmus of Tehuantepec, the high contracting parties agree upon by the present treaty, that when some well founded complain should be produced by the assignees of said privilege or in their name against the Government of United Mexican States of having perpetrated or allowed to be perpetrated a violation of said contract and privileges, such a violation or impediment, if by the proper investigation, made by the U.S. should appear to exist, this violation may be considered and declared as a just cause of discordance, according to the sense and meaning of the 21 art. of the treaty of Guadalupe Hidalgo, and it will be settled in accordance with it. This revival and recognition on the part of the Government of the Mexican United States of the aforesaid concessions, rights and privileges, as also this mutual garanty and acknoledged obligation on the part of the two Governments to afford protection and security to the persons and property of those who may undertake the opening of the intended way of communication, and free transit by the same way, when opened, it is understood are all with the conditions, stipulations and restrictions following. 1st Said

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and the project, suggesting that the two papers may at one time have been tied together with a cord or ribbon. The papers on which the instruction and the project are written have characteristics of size, quality, watermark, etc., that are different from any other sheets to be seen in 18 or 19 Despatches, Mexico.

The two papers are in distinctly different hands. Neither is in the handwriting of Gadsden, and no other specimen of either writing is in 18 or 19 Despatches, Mexico. There are, however, examples of both handwritings among the notes and enclosures from the Mexican Legation in Washington between July 1853 and July 1854 (D.S., 7 Notes from the Mexican Legation). The handwriting of the Mexican instruction appears to be that of Antonio Sierra, then clerk of the Legation, and the handwriting of the project of treaty that of José María González de la Vega, Secretary of Legation. The latter, who arrived at his post shortly before January 3, 1854 (*ibid.*, January 3, 1854), may have brought with him the original instruction and enclosure. Since no note transmitting the papers is of record, and no endorsement of the date of receipt appears on them, it may be presumed that they were handed to Secretary of State Marcy by the Mexican Minister in person and that they were subsequently misfiled.

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concessions, rights and privileges shall not be considered obligatories upon the Government of the United Mexican States for their recognition or revival unless the actual holder or holders thereof shall give within sixty days from the date of the ratification of this convention by the Government of the U.S., their consent in writing, so that the same may be deposited in the Department for foreing affairs of Mexico, binding themselves and their assignees of the said grant to pay or cause to pay out of the first proceeds of the canal, rail road or plank road, as the case may be, which shall belonge to the Mexican Government, in conformity with the 5th art. of the original grant or privilege, the sum of six hundred thousand dollars, and interest thereon at the rate of six per cent per annum from the signing of this convention. This agreement to pay that sum, and the payment thereof which shall be made, shall be for the benefit and reimbursement of those who paid or then may be holders of the receipt of paiement of the said sum of six hundred thousand dollars, advanced to the Government of the Mexican United States, in virtue of the stipulations of the grant made to A. G. Sloo and company with respect to the right of way accross the Isthmus of Tehuantepec declared and dated. 2dly If the holder or holders of the grant which is the subject of the present art. should refuse after thirty days notice to enter into a satisfactory agreement with the two contracting Governments for the arraingament of the rates of transportation, or if afterwards they should not comply with this agreement, the Governments which garanty the protection of the work of opening the communication (which may be by the construction of a plank road, in the first instance if such should be determined by the holder of the grant) should not be commenced within twelve months from the date of the exchange of ratifications of this convention, and if the supposed road should be a plank road, if it should not be completed within three years, and the rail road within a reasonable term, thereafter it may be considered by the Government granting the privilege, sufficient cause to resume or abrogate them. 3dly In case of any difference arising between the Government of Mexico and the empresarios, present or future, of this work, which may involve the loss of the right to the privilege, the party complaining shall draw up an exposition of its pretensions and grounds, and a similar exposition shall be drawn up by the other party and both shall be submitted to the decision of two arbitrators who shall not have any diplomatic character or commission and who shall reside within the Mexican territory; one of these arbitrators shall be named by the holders of the privilege and the other by the Government of Mexico, and these two arbitrators in case of difference shall name a third with the requisite above prescribed, who shall decide the controversy, and from the decision of these arbitrators there shall be no appeal or recurse whatsoever. Of all other questions which may arise, the Mexican Courts shal take cognizance. 4dly If the decision of the arbitrators or the umpire, as the case may be, shall involve the loss of the privilege, it shall be sold at public auction, with the conditions which may be imposed by the laws of Mexico in force at the time when the decision may be pronounced upon the subject of the seizure and loss of the privilege, giving notice thereof to the public at least three months before the sale by advertising in two of the principal newspapers at Mexico and Washington. The sale shall be made by a commissioner named by the arbitrators; the proceeds thereof shall be paid to the grantees, who shall have lost the privilege after having deducted the expenses of the judgement and sale. To the Government of Mexico there shall be paid only such duties as may be legal in the City of Mexico, and the commisioner shall give bond for his good conduct.

5dly The said privilege shall not be sold to any foreign government, corporation or politic body: it shall only be acquired by private individuals, and the purchaser shall remain under the obligation to prosecute the work to its conclusion, and to fulfil the conditions required by the Mexican Government from the grantees, whose rights may be sold and all other conditions which the said Government may legaly imposed.

6dly Both contracting Governments bind themselves in conformity with the preceding stipulations to do all that may be in their power to maintain the neutrality of the road and of ten leagues on each side thereof as Mexican territory, not only in time of peace, but in time of war, even when one of the two nations shall be party thereto.

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They further agree that in the event of a war at any time between themselves, no vessel of either nation destined to the extreme points of the communication across the Isthmus or to any point of the line of the coast defined by the grant of the 1st of March 1842, shall be captured within sixty miles of such extreme points of the road or of the coast, it being understood that there shall be free and secure passage in time of peace for the transportation of all kinds of goods and merchandise, arms or amunitions of war; but in time of war only for merchandise or effects which are not contraband of war, as the latter shall not be permitted to pass. Notwithstanding the neutrality of the communication and of the of the country for ten leagues on each side thereof, Mexico shall preserve the full and complete sovereignty over said communication and territory; strict observance nevertheless shall be had of the conditions of the grant. No passport shall be exacted of persons who may cross the Isthmus; but the Government of Mexico shall exercise jurisdiction over vessels and persons passing the Isthmus in like manner as over those which may belonge to its ports and territories. Salutes shall be made according to costume in the ports.

Some few facts regarding Gadsden's draft treaty are disclosed by the protocols (printed below) of the conferences of the Plenipotentiaries. Article 1 contained the boundary clause, which, according to a pencil note in Gadsden's hand on the manuscript of the protocol of December 16, 1853, was line No. 4 of the recorded instructions of October 22; [1] Article 2 of the draft dealt with Article 11 of the Treaty of Guadalupe Hidalgo; but some, at least, of the concluding clauses of Article 2 of the signed treaty and also Article 8 thereof were Mexican proposals; Gadsden's draft included a provision for recognition by Mexico of the Garay Grant, may have included something like Article 4 of the signed treaty, and presumably included Articles 6 and 7 (5 and 6 of the final text); it is probable that Articles 5 and 9 (4 and 7 of the final text) were put forward by Bonilla; and as the demarcation clauses of Article 1 were suggested and agreed to in principle at the conference of December 23, they seem not to have followed whatever may have been written on that subject in Gadsden's project.

While the conferences were in progress Gadsden wrote two notes to Bonilla, one, after the meeting of December 10, regarding his powers, and the other, after that of December 16, offering to purchase Lower California; those notes are not textually available but are mentioned in the protocols, or "Notes of Diplomatic Conferences",[2] which follow (D.S., 18 Despatches, Mexico):

Notes of Diplomatic Conferences for the adjustment of the various issues between U States and Mexico Dec 1853

Dec 10th 1853. Genl Gadsden Envoy Extraordinary and Minister Plenipotentiary of the U. States, attended by the Secretary of Legation met in the Office of Foreign Relations, the Commission appointed by H.E. the President of Mexico, composed of HE. Don Manuel Diez de Bonilla Plenipotentiary ad hoc;

[1] The supplemental offer of Gadsden, discussed on December 22, to purchase Lower California, somewhat supports this.

[2] It is strange that Gadsden did not have these papers with him when he came to the United States; he received them while at Washington by mail from Mexico City and transmitted them to Marcy on March 20, 1854, with the suggestion that they be sent to the Senate (see Manning, *op. cit.*, IX, 702); and all of them except that of December 30, 1853, the day of signature, were sent to the Senate on March 21, 1854.

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of Don José Salazar Ylarregui, and Genl Mariano Monterde Scientific Commissioners clothed with Full Powers for this Negotiation and of the Secretary Don Lucas de Palacio y Magarola to negotiate and arrange the terms of a Treaty by which all the issues between the two Republics would be reconciled by an extension of Territory to the U States, she thus securing what she was supposed to have attained by the Treaty of Guadalupe, to wit a Boundary susceptible of defence for the mutual protection of the two Countries from Indians and in the right of way for a Military or Rail Road deemed as of equal importance for those ends as is clearly conveyed in the 6th Article of the Treaty of Guadalupe. The Parties thus met having presented and examined their respective Powers Mr Bonilla observed that although the Powers presented by Genl Gadsden were in correct form as to their general character, and for the exercise of his Ministerial functions, still he hesitated to receive the same as sufficient for the Negotiations about to be begun, which seemed to require especial Powers; a remark called forth by recollection of the case of Mr Conkling, who tho' invested with equal and full Powers, when the Convention of Sloo was arranged, yet the U States had denied his Authority to enter into such Convention; Mr Bonilla wished to avoid and anticipate any such difficulty. Genl Gadsden replied, that the express motive and object of his Mission, was to arrange a final settlement of questions pending between the two Governments, of which, he offered as further proof, a letter officially addressed to him by the Department of State at Washington, informing him of his appointment as Minister to this Republic for the adjustment of these very negotiations. He furthermore stated, that should he wait to receive especial Powers, the object of his Government would be defeated by the time thus lost. Mr Bonilla answered that these objections would be considered removed by General Gadsden's addressing him an official communication reproducing the remarks above stated. With this understanding, Genl Gadsden presented a Projet of Treaty, and it having been agreed, that as soon as the same should have been translated and examined by the Commissioners on the part of Mexico a day should be named for another meeting, the Conference concluded.

JAMES GADSDEN — MANUEL DIEZ DE BONILLA
JOSÉ SALAZAR YLARREGUI — J. MARIANO MONTERDE

Dec. 16th By appointment the Commissioners named in the report of Conference on the separate parts of the U. States and Mexico met in the Office of Foreign Relations to continue the negotiations of 10th inst. H.E. Don Manuel Diez d Bonilla acknowledged the receipt of an official note from Genl Gadsden reproducing his remarks on the sufficiency of his Powers. The discussion was then opened upon [1] the Boundary Line proposed by Genl Gadsden in the first Article of the Projet of Treaty offered by him for the purpose of effecting the objects of his Government The Parties dissenting widely both as to the direction of the line proposed, and the amount of money to be paid for the land embraced therein, the difference being upon the quantity of land which would be thus ceded; it was finally agreed, that, to obviate any difficulties which could interpose on this head, Genl Monterde and Don José Salazar Ylarregui should meet at the house of Genl Gadsden to discuss these points with the Commissioner of the U. States

JAMES GADSDEN — MANUEL DIEZ DE BONILLA
JOSÉ SALAZAR YLARREGUI — J. MARIANO MONTERDE

Dec. 22nd Commissioners met at the Office of Foreign Relations to continue the negotiations of the 10th and 16th. The discussion still hung upon the line proposed by Genl Gadsden, who since the meeting of 16th had offered by note to Mr Bonilla to purchase *Lower California*. Mr Bonilla in reply denied his Powers to alienate this portion of Mexican Territory; that his instructions obliged him to declare, that only in view of the necessity, which the U States had of land for

[1] Here is a penciled reference mark to the following words written in pencil in the margin in Gadsden's hand: "This Line was the one defined in N° 4 of Mr Marcys instruction, deliverd thro Mr. Ward".

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the proposed road,[1] did Mexico agree (not to defeat a project so beneficial to the U States and the world generally, and to preserve peace and the good understanding which existed) to yield to the propositions of the U States, so far as was compatible with her interests, in view of which, she offered the following line.

That remaining, which was already established by 5th Article of the Treaty of Guadalupe between the two Californias, the limits between the two Republics, should continue from the point at which said line cuts the River Colorado, along the middle of deepest channel of said river to a point distant two marine leagues from the most Northern part of the Gulf of California; thence a right line to the intersection of 31° Latitude North with 111° Longitude West of Greenwich; whence another right line until it intersects the Rio Grande or Bravo del Norte in Latitude 31°47′30″—whence said limits shall continue down the middle of deepest channel of said river to where it empties into the Gulf of Mexico, in accordance with what is provided in said Article 5th of the Treaty of Guadalupe Hidalgo. Mr Bonilla also added that he made this proposition with the full understanding, that the town of *Paso del Norte* in the Department of Chihuahua, and the entire *Gulf of California*, should continue to be, as they now are under the sovereignty jurisdiction and dominion of the Mexican Republic, which on his part was a sine qua non for the celebration of a Treaty. Each party prolonged the discussion, sustaining their own views, and not coming to any decision, it was determined to defer the question for the meeting fixed for to morrow.

James Gadsden — Manuel Diez de Bonilla
José Salazar Ylarregui — J. Mariano Monterde

Dec 23rd. By agreement of yesterday the Commissioners on either side met in Conference to prosecute their Negotiations. The discussion was resumed upon that portion of Genl Gadsden's Projet relative to the dividing line between Mexico and the U States. Mr Bonilla being asked by Genl Gadsden, the decision of Mexico on the proposal made by him, replied, that what had been stated thereupon, in the previous Conference, was final and definite; the more so as it was considered, by the proposed line the aims of the U States were satisfied. The Envoy of the U. States observed, that such being their decision, he accepted the line, on condition that the Lake Guzman remained within the Territory to be ceded to U States, by making said line run a proper distance to South of the Lake which in itself might not be of importance; but should the Boundary line happen to traverse it[2] there would not be left room for a road; as it was supposed that the same would of necessity turn to the South of said Lake—otherwise the objects of his Government, which were to reach her more Western Frontier would not be carried out. This having been conceded on the part of Mexico—it was thus settled what was to be the Boundary line between the two Countries. Genl Gadsden then inquired, if Mexico would oppose it, if at any future period it should be considered advantageous to the two Countries to construct a branch of Rail Road to El Paso. Mr Bonilla replied that if the conditions proved acceptable and the sovereignty and exclusive jurisdiction of the country pertaining to Mexico, was not thereby affected, he could discover no objection; that this could not now be a matter of stipulation, but be left for the time of its execution. Mr Bonilla remarked, that it was understood, that all the stipulations of the Treaty of Guadalupe, in favor of Persons as well as of property civil and ecclesiastical were to extend in like manner to the Territory proposed to be ceded; but that he furthermore requested, that all who now inhabit said Territory should be for ten years exempt from taxation. The American Envoy replied that he could not concede this, as contrary to the laws of U States and the rights of each individual State; but that all the stipulations of Treaty of Guadalupe should be extended to Citizens and property. Mr Bonilla proposed to consider the amount to be received by Mexico as compensation for the cession of Territory. Genl Gadsden

[1] Here is a penciled reference mark to the following words written in pencil in the margin in Gadsden's hand: "and for perfecting the Boundary Line between the Two Republics".

[2] The line in question did not traverse Lake Guzman.

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stated that he had been instructed by his Government to offer one single amount for all the items of negotiation; wherefore he suggested, that it were better to agree upon the various points at issue and thereafter return to the subject of compensation. On the mode of establishing the line, where it might not coincide with that of 5th Article of the Treaty of Guadalupe—The Envoy of U States thought that by the appointment of three Functionaries on either side, those difficulties, which had occurred in the establishment of the line under the Treaty of Guadalupe would be avoided. Mr Bonilla explained, that he considered the creation of three Functionaries of equal faculties and rank would rather produce results contrary to what the American Minister supposed; whereas the existence of a single Commissioner on either side ensured harmony and promptness in the work The American Envoy suggested that the Commissioners be allowed to name an umpire or third person in the event of any difference between them; this point was given up, as the Mexican Commission observed that no difference could exist in a mere question of Mathematic Science. So it was agreed to nominate one Commissioner on either side for the establishment of the Boundary line; and moreover that the line thus established by consent of Commissioners should be considered a part of the Treaty, without necessity of further approval; and that said Commissioners should meet at Paso del Norte three months after the exchange of ratifications of the Treaty to enter upon their duties. Mr Bonilla observed, during the discussion which next arose upon the 2nd Article of the Projet of Treaty offered by Genl Gadsden; that Mexico consented to the abolition and relinquishment of the 11th Article of the Treaty of Guadalupe for the sake of harmony and peace which it was asserted over and again had been threatened by the interpretations given to said Article by either side, provided she were amply compensated for the losses which her Government and Citizens had suffered in the past, and for the responsibilities and obligations of which the U. States in the future would be relieved The Envoy of the U States explained in reply that his Government had as far as was practicable complied with the stipulations of said Article; that she had never understood nor conceded that this Article (11th) admitted of that interpretation which Mexico sought to give it; and that never in any case could he recognize the obligation of an indemnity for losses alleged; and still more it was impossible to distinguish between losses arising from incursions of Indians from U States Territory and those caused by Barbarians within the limits of Mexico. A prolonged discussion ensuing upon the same topic, Genl Gadsden remarked that they were merely reproducing arguments that had been canvassed previously; that thus they could arrive at no result and finally proposed as a compromise of the difficulty, the entire relinquishment of the Article by Mexico which would be considered in the amount he was authorized to pay for the arrangement of the various issues between Mexico and U States. Mr Bonilla observed that it was alike to treat of these issues separately as conjointly—that he wished to state that Mr Letcher in 1852 had offered five millions dollars, and Mr Conkling eight millions in June of the present year for the abolition of 11th Article; offers which Mexico had refused as insufficient, facts he desired to be borne in mind. The American Envoy stated that he could find no evidence on record of such an offer having been made by Judge Conkling, tho' not in the least casting any doubt upon Señor Bonillas assertion. The Conference having continued some hours it was agreed to renew it on to-morrow

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Dec 24th. Genl Gadsden opened the conference to-day with an expression of the desire on the part of his Government for the recognition of the so called Concession to Garay, as the same had passed into the hands of American Citizens. This was but the renewal of the subject contained in the Projet of Treaty presented by him and again urged upon the Commissioners of Mexico by letter. Señor Bonilla replied that the Congress of Mexico had formally declared this concession as null and no longer existing; therefore the present Government could not recognize it as valid; that the transfer, in violation of the spirit and letter of the Grant itself, and without the consent of Mexico, which in fact had not been

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sought, was illegal; that no such right as claimed by American Citizens, could, by the terms of the Grant vest in strangers; he repeated therefore that Mexico could not recognize this Concession; or the right of the U. States to intervene in a matter entirely domestic and administrative. The American Plenipotentiary pressing the point, and Mr Bonilla combatting it as earnestly, without a prospect of reconciling their views, the latter gentleman declared that, Mexico was willing to concede to the U States, the country necessary for the purposes of such a road as they might deem proper to construct, as the World and civilization would be greatly benefitted thereby; that in regard of peace and harmony between the two Nations she would for an adequate compensation consent to abolish the 11th Article of the Treaty of Guadalupe which had been threatening so serious consequences; that though ready to yield thus much to a neighboring Republic, he never would assent to any thing that in the slightest degree could affect the honor of his country or infringe upon her sovereignty; for these reasons he could not and never would consent to recognize the Garay Concession; with his resolve and views thus explained the only mode of disposing of the matter was to include this Grant within the number of claims proposed to be assumed by the U States— not that it was to be thought that Mexico thus confessed its legality or would admit of any such arrangement, and provided that the holders of the transfer from Garay should previously to any payment for indemnity have relinquished to Mexico the titles and documents they hold in evidence of such claim as they pretend. The American Commissioner again offering three millions of dollars for the right of way as ceded to Garay and now claimed by U States Citizens, the Plenipotentiary on the part of Mexico answered, that however great the offer the resolve of Mexico, on this point was unalterable. The American Commissioner stated that he would not go beyond five millions for the satisfaction of claims of American Citizens against Mexico, and tho' that amount had been claimed by the holders of the Garay claimants, it might be reduced. Mr Bonilla here observed, that should this Concession be examined according to the principles of Justice, of the Law of Nations, and the Laws of Mexico; it had in itself no value, and should the amount expended by said holders be returned them the U States would not pay much; as to the remaining claims, calculating upon the basis of those which had accumulated prior to the Treaty of Guadalupe, those subsequent to that date could not exceed two millions of dollars. Genl Gadsden being asked, what amount he was willing to pay to Mexico for the concessions made to the U States, replied that these involved points at issue, and that the adjustment of these conferred benefits on both as ending the differences between the two Countries; that the U States would, in exonerating Mexico of all demands of U States Citizens become liable in the sum of five millions dollars, and for the other points agreed upon would pay twelve millions—making the amount of the benefits to Mexico seventeen millions Mr Bonilla thought this offer inadequate and reasons pro and con being still advanced on either side; it was finally decided, that the U. States should pay $15.000.000 for all other concessions, and $5000.000 to be devoted for the satisfaction of private claims, both being freed and exempted of all obligations from the date of the signature of the Treaty. It was understood that Mexico in relinquishing the 11th Article of the Treaty of Guadalupe did so on condition that the U States, would not on any occasion that they might have to remove the Indians, drive them to the necessity of seeking homes by means of incursions into Mexican Territory. The Treaties[1] of 1831 and 1848 were to continue in force, where not done away with or rendered nugatory by the stipulations of the Treaty now negotiating. Genl Gadsden remarked that the $15000.000 should be paid in Mexico, but on request of the Plenipotentiary on her part, conceded that it be paid in the U States, and as follows, one-fifth on the exchange of the ratifications of the Treaty, the balance in monthly instalments with interest at the rate of six pr c't per an. The Government of the U States reserving the right to pay the full amount at an earlier date should it be desirous. The exchange of ratifications to be made in Washington within the term of four months from the signing. Mr Bonilla proposed the mutual aid of Naval and Military forces for the suppression of lawless incursions into the respective Territories; a measure, he thought, which would reflect honor on both Countries and carry great moral and political weight to which Genl Gadsden assented.

[1] Documents 70 and 129.

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It was then agreed that Mr Bonilla was to submit the draft of a Treaty presenting the points determined on—with which terminated the Conference.

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Dec 30th As previously agreed the Commissioners met at the Legation of the U. States to continue the Negotiation adjourned on the 24th. On the part of the U. States, James Gadsden Envoy Extraordinary and Minister Plenipotentiary, accompanied by the Secretary of Legation, John S. Cripps; on that of Mexico, His Excellency, Don Manuel Diez de Bonilla, Minister of Foreign Relations, Plenipotentiary ad hoc, Don José Salazar Ylarregui and General Mariano Monterde, scientific Commissioners, and the Secretary Don Lucas de Palacio y Magarola. The draft of a Treaty mentioned in the report of the conference of 24th having been carefully considered and the proper modifications having been proposed on either side and adopted; it was signed both in Spanish and English, in Duplicate; it was furthermore decided and mutually promised, in consideration of facts, mentioned by the Plenipotentiary that the terms of this Treaty be held strictly secret until such time as the same shall be ratified by the U States The Commissioners then separated after mutual congratulations upon the result of their many conferences, so often threatened by the intrigues of speculators and persons interested in preventing a happy understanding between the two Countries—

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Gadsden's lack of a full power had been waived (see the protocol of December 10); this note to him from Bonilla, dated December 20, 1853 (not mentioned by Gadsden in his despatches), seems to have included an oblique reference to the fact, as well as notification of requirement of more formal procedure in the future (D.S., file 026 Treaties/2150, translation of enclosure to despatch No. 7316 from Mexico City, dated September 3, 1938):

His Most Serene Highness the President of the Republic being desirous that all acts of his administration shall have the character of openness and frankness which should distinguish an enlightened Government, particularly in its dealings with other powers, he has been pleased to resolve that hereafter no convention or agreement of a diplomatic character shall be entered into, except when a treaty is signed with all its requisites in such a manner that it shall have the force and validity which are inherent in this kind of documents.

The undersigned, upon having the honor to communicate to His Excellency this decision of the Chief Executive, renews to him the assurances of his distinguished consideration.

The treaty was taken to the United States by Gadsden, who left Mexico City with Ward on January 4, 1854; this letter to Marcy from Gadsden of January 2 is marked as received on January 20 (46 Marcy Papers, 43215):

I have just concluded a Treaty: The Boundary somewhat tortuous, commencing at El Passo. say 4 miles above & running so as to enclose Lake Gusman— to the intersection of 111 Long' with 31 Latitude & thence to 2 leagues or 6 miles above the head of the Gulf of California— Price 15 millions including relinquishment of 11 Article—& 5 millions to extinguish American claims: embracing an indemnity for Tehuantepec Right of Way— I am overwhelmed in preparing copies of documents &c so as to start with the Treaty by Diligence on the 4th But

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as there has been some very extraordinary movements by Hargous: Ward & Co. to defect the Treaty (more anon) there is a possibility that I may be blocked out of a seat in Dilligence— The Game has been played— But I think I am secure— Least accident with design should bear sway. I write this precautionary letter— That you may know the reasons how I do not report myself & the Document: in advance of all others— The Treaty is safe—and the only & principal obstacles to earlier success was Wards arrival and his Combinations with the Hargous' and Escandon— I have exposed a conspiracy— You will be shocked at the recital— Its only redeeming virtue is that it defeated itself— But more anon

. . . . . .

[Postscript.] This is said to be the only Treaty for years which has ever been concluded without "Brokerage" a Mexican signification, where the Broker greezes the Officials: & retains all the Tallow— W——, instincts were too strong not to resist—

The first news of the treaty received at Washington was by a telegram from Gadsden to Marcy sent at New Orleans on January 12 (received on Sunday, January 15), reading: "All issues with Mexico reconciled on conditions honorable and just to both countries. Particulars by mail" (47 *ibid.*, 43299); and on the same day Gadsden wrote this to Marcy (*ibid.*, 43283):

I have just landed from the Texas with a Treaty, which reconciles all the issues with the Mexican Government and on terms *equal & honorable* to both Countries.

I feel every assurance that its provisions will meet with the ready approbation of the President and Senate— I assure you they are far more favourable than I had any reasonable hopes to accomplish 10 days since— The obligations under the 11 Article are expunged— A new & more extended boundary, capable of strong defence secured: and all Claims of US Citizens including an indemnity to the American Assignees of Garay Grant for 20 millions 15 paid Mexico & 5 reserved for indemnities— The Line commences at about 3 miles north of El Passo in Latitude 31°47'30 & runs thence to where the 111 Longitude intersects the 31° of Latitude & from thence to 2 leagues above the head of the California Bay on the Colorada & by the main Channel of that River to where the Boundary between the Californias intersects the same— I will personally explain many unexpected difficulties thrown in the way of our negotiations: and which certainly delayed a consummation: if they did not operate unfavourably on the issue— The Territory by estimate will contain between 35 & 40 millions of acres: and its Mineral resourses far transcend the first valuations— It embraces the Aresonia Ridge: which develops Iron & Copper, as well silver & all along the San Pedro are developments of silver and some indications of Quick silver— I write in haste for mail— I will confide the Treaty at Branchville to Mr Ward, and pass by Charleston to see my family enroute for Washington— I wish the Pres[t] to examine the Treaty on its own merits & he will thus have time before I reach the City

Gadsden arrived at Charleston on January 17 and left there for Washington on January 23 (Charleston Courier, January 21, 1854, p. 2; January 25, 1854, p. 1). It was accordingly Ward who delivered the treaty to President Pierce on January 19 (see New York Herald, January 20, 1854, p. 1).

For Santa Anna's accounts of the negotiations (written in 1858 and in his later memoirs), see Rippy, 144–47, and that author's translations thereof in Southwestern Historical Quarterly, XXIV, 235–42.

As has been told above in detail under "Senate Proceedings and

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Amendments", the treaty signed by Gadsden was greatly changed in all its most essential features before it went into force. The territorial cession negotiated by Gadsden was lessened; for the provisions for the reciprocal release of claims and payment of the American claims by the United States to the extent of $5,000,000 was substituted a clause which had the effect of extinguishing all claims against the United States under Article 11 of the Treaty of Guadalupe Hidalgo, leaving all American claims against Mexico intact; to the abrogation of that article was added abrogation of Article 33 of the treaty of April 5, 1831 (Document 70); the money consideration to Mexico was reduced from $15,000,000 to $10,000,000, with altered terms of payment; and an article (8) in support of the Sloo Grant was written. The major engagements of the Gadsden Treaty were framed in the Senate of the United States (in large part in disregard of or contrary to the recommendations and wishes of President Pierce), and not at Mexico City. Of the work of the Plenipotentiaries there were left intact (except for a few trifles of no import) the demarcation and following clauses of Article 1, the articles regarding the ceded territory (4, 5, and 6 of the final text), and the reaffirmation of Articles 21 and 22 of the Treaty of Guadalupe Hidalgo (Article 7), with the preamble and formal closing (Article 9 and final clauses).

On December 22, 1853, eight days earlier than the treaty, Marcy wrote another instruction, responding to Gadsden's private despatch of November 20 (quoted above); this instruction had no influence on the negotiation, as it did not reach Mexico City until after the signature of the treaty and the departure of Gadsden for the United States; it is printed here to show the views and policy of the administration at the time (D.S., 16 Instructions, Mexico, 436–40):

> In several of your despatches you have expressed a desire to receive further instruction in regard to a treaty to be made with Mexico for the adjustment of the difficulties and matters in dispute between her and the United States. In the month of October, Mr. C. L. Ward left this city for the city of Mexico with verbal instructions to confer with you in regard to the matters upon which you wish the views of your government. You were desired to consider him as the authorized agent of this government for that purpose.[1]
>
> The views of this government, which he was instructed to make known to you, related to the adjustment of the boundary question, changes in the line, and all the claims of Mexico or its Citizens upon the United States arising under the Treaty of Guadalupe Hidalgo, on the one hand, and on the other, all the claims of the United States and their Citizens upon Mexico arising under the same treaty. The respective sums which you were authorized to offer for the suggested changes in the boundary, were to cover these claims of Mexico and her citizens, those of the United States and their Citizens under the Treaty, and only those under the Treaty were to be released. There were good reasons for not clogging the negotiation with other claims. The principal one was that it would be likely to embarrass and delay an adjustment. This government would, as a necessary consequence, assume the payment of the claims from which it might by any treaty exonerate Mexico, and in that case it would be proper to deduct from the sum to be allowed for a new and better boundary an amount approximating to that which these claimants might reasonably expect to receive from the United States. Some of these claims are of a very indefinite character;

[1] If Ward was the authorized agent of the Government to "confer" with Gadsden, his powers were more than those of a messenger charged with nothing but to communicate the wording of specific directions.

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for instance that of the proprietors of the Garay grant. Mexico denying, as she does, all right on their part to receive any compensation whatever, would be unwilling to deduct any considerable sum from a reasonable consideration to be paid for any new territory she might cede for the purpose of a better boundary. The release of that claim by the United States would subject this Government to a demand for a very large sum by the assignees of that grant. Without some understanding with these claimants as to what would be accepted by them, this government is unwilling to assume the payment of it when it is certain no equivalent allowance therefor could be obtained from Mexico; and if any thing like an equivalent allowance was insisted on, it would defeat the negotiation.

The other claims, independent of those arising under the Treaty of the 2d day of February 1848, are not sufficiently known to make it a matter of prudence for this government to assume them, or to hazard the success of the negotiation by reserving a sum to cover the liability which would be incurred by the general assumption of them. For these reasons, it was thought best that your negotiation in regard to a new boundary should not be embarrassed by the release or assumption of other claims than those arising under the several articles of the Treaty referred to.

If I rightly apprehend your private letter [1] of the 20th. ultimo, Mr. Ward has urged you to include into the negotiations for adjusting the boundary question, the settlement of that much vexed matter,—the Garay grant. For the reasons I have above stated, he was directed to inform you, not to embarrass your negotiation with it.[2] What he was to communicate to you was reduced to writing and placed in his hands, but he was not to take that writing with him into Mexico. As the negotiation now stands, I do not deem it improper or unsafe to extract from that writing what it contains in relation to the claims to be embraced in any Treaty you might be able to make:

> There may, also, be a reciprocal article in the new Treaty releasing Mexico from all damages and injuries which the United States may claim for themselves or on account of any of their Citizens arising under any articles of the Treaty of Guadalupe Hidalgo.

In relation to the last of the several lines indicated, the only one which, as you state in your last despatch, you have any hopes of obtaining,[3] Mr Ward was directed to communicate to you as follows:

> Though there has been but a partial reconnaissance there is but little doubt here entertained that a Line on the 32d parallel of latitude would give the United States a good route for a Rail Road from the Rio Grande to the Gulf, but neither a Line from Frontera or on the 32d parallel would be a good boundary, and if no better one can be obtained, it is important that with it there should be a release of the United States from the stipulations of the Eleventh article of the existing Treaty of boundaries. For a release of all claims for damages and losses under that Treaty, and a release from the Eleventh Article, together with a Line from Frontera or on the 32d parallel of Latitude the United States Minister is authorized to pay up to fifteen millions of dollars.
>
> The sum mentioned for each line is the maximum which the United States Minister is authorized to offer. He will get any one of the Lines indicated for a less sum if it be practicable. He is vested with discretionary power to modify to some extent any one of these lines, keeping in view and obtaining the end which he is aware, the United States have for negotiating a new line.

[1] Quoted above.

[2] In the recorded instructions of October 22, 1853, there is language limiting the negotiation to two subjects, the boundary and reciprocal claims under the Treaty of Guadalupe Hidalgo; but the Garay Grant is not *eo nomine* excluded.

[3] There is a misapprehension here, due to the vague language used by Gadsden in his private despatch of November 20, 1853 (quoted above), in which he wrote of the *"lesser session"* as the only one he felt "sanguine about"; by this he meant Pierce's line No. 4 and not, as Marcy thought, the final alternative line from the Rio Grande westward along either 32° or 31°48′ north latitude.

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One of the modifications contemplated is the deflection of the line from the 111th Meridian of Longitude so as to pass by the shortest line to the mouth of the Gila. This would equally with the proposed line secure the object of an uninhabited boundary but would give an awkward contour and deprive us of a port on the Gulf of California. Any considerable change will involve the propriety of a change in the amount of the consideration to be given. This is confided to his discretion influenced as it will be by the offers before specified.

Your views of the course of the President of the United States in relation to what is called the Sloo grant are correct. He has not determined to submit the Convention made by your immediate predecessor, Mr. Conkling, to the Senate, and I do not believe he will do so.

You intimate in your communications that possibly there may be money to a considerable amount, which the President might use in order to facilitate a difficult negotiation, but it is not so. The secret service fund at the control of the President is small. The amount annually appropriated does not exceed $40,000, and the appropriation for the present fiscal year has been in part expended. Should the President make application for an immediate increase of it to a large amount, it would be necessary to explain to Congress the particular use proposed to be made of it. The subject would of necessity go before both Houses and undergo much debate. It would be impossible to preserve secrecy as to the object to which it was intended to apply it. I cannot, therefore, promise that any thing can be done in this way to facilitate your present negotiation.

The last instruction written to Gadsden about the negotiation was that of January 6, 1854, a week after the signing of the treaty but before news of it had reached the Department of State. Therein Marcy acknowledged the receipt of Gadsden's despatch No. 16, of the previous December 16 (quoted above), and proceeded thus (D.S., 16 Instructions, Mexico, 442–45; the portions of the instruction following this excerpt have been quoted above):

I much regret the very many embarrassments which have been thrown in the way of the negotiations you have in hand. The statements in relation to the views of this government as to terms on which it is willing to treat with Mexico, supposed to have been sent out by the Mexican Minister here, are so very erroneous and so well calculated to exert an adverse influence upon your negotiations that I deemed it my duty to attempt to correct them, and as the best means of doing so, I sought an interview with General Almonte. I expressed to him my regret that such erroneous statements should have reached Mexico in any way, and still greater should be my regret if his government at all heeded them; for if it did, I was quite certain the attempt to settle the existing difficulties between the two countries would fail. I assured him, that, though it was desirable to get a feasible route for a Rail Road in the vicinity of the Gila river, any idea that the United States would give an enormous sum for a tract of barren country in that region ought at once to be abandoned by his government, as also the idea that a cession of such a tract was not to be accompanied by an adjustment of claims for damages arising under the Treaty of Guadalupe Hidalgo. I also remarked to him that his government ought not to form any extravagant notions as to the amount of those claims on the part of Mexico, for he was well aware of the different constructions given to the 11th. Article of that Treaty. Upon that subject the government of the United States had spoken for itself, and Mexico ought not to permit herself to be misled by the speculative views of persons who had no connection with the management of public affairs. I assured him that though the Tehuantepec grants might come incidentally into view, you would not suffer the negotiation to be embarrassed by them. General Almonte seemed to think that the negotiation has been prejudiced by the very large tracts of Territory which this government had asked for. To this, I replied that I could not conceive how any injurious effect could result from that

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cause. I told him the United States were at liberty to ask, and Mexico had a right to refuse. Beyond a feasible route for a Rail Road it was not territory that was wanted, but a safe and easily defended boundary—and in having such a boundary Mexico was much more concerned than the United States. In the discussion of these matters with General Almonte I endeavored to bring down the extravagant expectations which have I fear been raised in Mexico by indirect and unfair means, and I hope that to some extent I have succeeded.

Demarcation of the Boundary

Regarding the execution of the demarcation clauses of the Treaty of Guadalupe Hidalgo (Document 129), see volume 5, pages 414–21, and the authorities there cited.

The Emory report on the boundary, dated July 29, 1856, gives the history of the proceedings had under both this treaty and the Treaty of Guadalupe Hidalgo (Senate Executive Document No. 108, 34th Congress, 1st session, serial 832; hereinafter cited as "Emory Report"; printed also as House Executive Document No. 135, 34th Congress, 1st session, serial 861).

The provisions for boundary demarcation set forth in Article 1 of the Gadsden Treaty required the appointment of one Commissioner by each Government. The Commissioner of the United States was William Hemsley Emory, Major, 1st Cavalry, U.S.A., who was appointed on August 4, 1854 (for his commission, see Emory Report, xvi). The Commissioner for Mexico was José Salazar Ilarregui, notice of whose appointment was given to Secretary of State Marcy by the Mexican Minister at Washington under date of October 14, 1854 (D.S., 7 Notes from the Mexican Legation). The journal of the Commission is printed in Emory Report, 26–38. For the organization of the American side of the Commission, see Emory Report, 24.

The Commission met first informally at Paso del Norte (now Ciudad Juárez) on December 2, and formally on December 4, 1854. The initial point on the Rio Grande "where the boundary . . . leaves the river to run westward" at latitude 31°47′, was marked on the ground on January 10, 1855, and the foundation of the monument, placed "as near the river as the nature of the ground will admit", was laid with ceremony on January 31, 1855.

At the last meeting of the Commission in the field, on August 16, 1855, the following articles of agreement were recorded (*ibid.*, 32–33):

1. Mr. Emory, the American commissioner, agrees to adopt, unconditionally, all monuments, mounds, lines, and points now established by Mr. Salazar, the Mexican commissioner, and by Don Francisco Jimenez, first engineer of the Mexican commission.

2. Mr. Salazar, the Mexican commissioner, agrees to adopt unconditionally all the monuments, mounds, lines, and points now established by Mr. Emory, the American commissioner, and by his assistants, reserving the right to substitute a monument for a mound at the intersection of the meridian with the parallel of 31°47′, and to erect a mound or monument on the same parallel to the south of the Potrillo, and at any point along the line already established where it may appear to him necessary, and where heretofore it was impracticable, owing to the absence of water.

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3. The two commissioners agree to declare, and do declare, the line surveyed, marked, and established as far as the 111th meridian of longitude, as the true line of boundary between the two republics, and they agree also to declare, and do declare, the line established from the 111th to its intersection with the Colorado, the true line between the two republics. They further agree to declare the line fully surveyed, marked, and established through its whole extent as soon as notification is received from Señor Jimenez and Lieutenant Michler that the topography of the last named line is completed between the 111th meridian and the Colorado river, and it shall be the duty of each to inform the other when such notification is received, and also to report to their respective governments that all the field-work of the boundary is concluded.

4. To carry out the stipulations in the first article of the treaty of December 30th, 1853, requiring the commissioners to make proper plans of their operations. It is agreed that the two commissioners, with their assistants, shall meet in the city of Washington on the first day of April, 1856.

On October 15, 1855, the Mexican Commissioner wrote from Janos (in northwestern Chihuahua) to the American Commissioner as follows (*ibid.*, 35, translation; and for a translation of the communication of the same date from Salazar to the Mexican Minister of Foreign Affairs, see *ibid.*, 35–36):

Lieut. Michler has just delivered to me, personally, an official note, whereby I am informed that the survey of the line between the meridian of 111° and the Colorado has been completed.

This I have communicated to my government; and I advise you of the same, hoping that you will be pleased to communicate it to that of the United States, conformably to the resolution of article 3d of the convention held on the 16th of August of the present year.

On December 18 Major Emory thus reported to the Secretary of the Interior, Robert McClelland (*ibid.*, 35):

I communicated to you, a few days ago, a telegraphic despatch reporting the completion of the survey of the boundary.

I have now the honor to inform you that I have received official information of the arrival of the last surveying party of the commission in San Antonio, and the completion of the work assigned to it.

I have also to communicate to you the copy of a letter from Señor Salazar, the Mexican commissioner, informing me of the complete fulfilment of the 3d article of the convention with him, signed August 16.

The field-work of the boundary commission is therefore at an end.

THE INITIAL POINT ON THE RIO GRANDE, INTENDED TO BE IN 31°47′ NORTH LATITUDE[1]

The initial point of the land boundary is located in the middle of the deepest channel of the Rio Grande where it is crossed by the parallel of 31°47′. This is not a fixed point, but is subject to continual change with the meandering of the river.

Monument No. 1, the initial monument on the western land boundary, was constructed on the west bank of the Rio Grande in 1855 during the original survey of the boundary line and has remained unchanged from its original position ever since. It was repaired and a shell of concrete added in 1892. Although the position of Monument

[1] These paragraphs were written by the Geographer of the Department of State, Mr. Samuel Whittemore Boggs.

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No. 1 has never changed, the computed latitude and longitude of the monument (that is, its relative distance from the equator and from the meridian passing through Greenwich) have changed as new and doubtless more accurate surveys have been made. The position of the monument, according to different reports, is given as follows:

Description	Latitude (north)	Longitude (west)
Survey by the Boundary Commission in 1855.	31°47′00″	106°31′23″.50.
Resurvey in 1892	31°47′01″.35 (mean geodetic latitude).	106°31′39″.03.
Redetermination by the U.S. Coast and Geodetic Survey, computed on the North American datum of 1927.	31°47′01″.612	106°31′45″.109.

The initial monument is thus determined to be 1.612 seconds of latitude, or approximately 162.87 feet, farther north than was intended by the Gadsden Treaty.

The distance along the boundary line due west from the initial point in the Rio Grande to Monument No. 1 is not constant, but varies, as stated above, with the meandering of the river. At various times the distance has been recorded as being 71.04 meters (in 1855, original boundary survey), 172.6 meters (in 1892, Barlow survey), 147.34 meters (in 1930, Gannett survey), and 142.04 meters (in 1939, Rio Grande Canalization Project surveys).

MONUMENT NO. 127 (OLD EMORY MONUMENT NO. 27), INTENDED TO BE IN NORTH LATITUDE 31°20′ AND WEST LONGITUDE 111° [1]

The position of one of the turning points on the boundary, which is less than ten miles west of the city of Nogales (in Arizona and Sonora), was intended to be, by definition of the Gadsden Treaty, in 31°20′ north latitude, 111° west longitude. This is the western terminus of that portion of the boundary on the parallel of 31°20′ north latitude; from that point the line follows an azimuth or great-circle course to the north of west, to a point in the Colorado River.

By the original boundary survey in 1855, however, the monument marking this turning point (Monument No. 27 of the Emory report) was located about four miles too far west and a few feet too far south. The latitude and longitude of this turning point (now marked by Monument No. 127), computed on the North American geodetic datum of 1927, are as follows: latitude 31°19′56″.07 north; longitude 111°04′27″.60 west of Greenwich (Garner, Triangulation in Arizona (1927 Datum), pt. 1, p. 32).

According to this determination, the turning point is approximately 4.396 miles west and 397.099 feet south of the point intended by the Gadsden Treaty.

[1] These paragraphs were written by the Geographer of the Department of State, Mr. Samuel Whittemore Boggs.

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The Boundary Maps

By Mrs. Sophia A. Saucerman, Assistant Geographer, Department of State

THE MAKING OF THE MAPS

Preparation of the originals of the boundary maps from plans, sketches, and field notes of the boundary survey, was carried out at Washington.

During a period when Major Emory was temporarily in charge of the United States section of the Boundary Commission under the Treaty of Guadalupe Hidalgo, he wrote to Secretary of the Interior Thomas Ewing from San Diego on March 1, 1850 (Senate Executive Document No. 34, pt. 2, 31st Congress, 1st session, serial 558, p. 9):

> This important matter of the record, which when printed, and the copies multiplied, forms the imperishable evidence of the boundary, cannot be done in this country; neither the necessary papers nor books of reference can be had here. It is a business never attempted in the field, nor away from the societies of the learned: it must be done at the proper places and by the persons who made the observations on which the results depend, or the results must be lost to the country.

Secretary Ewing on April 29, 1850, directed Major Emory to press the survey of the boundary from the Pacific Ocean to the mouth of the Gila River and to remain in the field until he had gathered "all the elements necessary for the calculations, and a due plotting of the same"; then to proceed to Washington for the purpose of making the calculations and maps (*ibid.*, 19–20).

Major Emory returned to Washington in the fall of 1850 to project the maps of the California line (D.S., United States–Mexico Boundary, envelope 6, Emory Correspondence, hereinafter cited as "Emory Correspondence"; letter dated at Washington July 15, 1856).

The surveying party left to run the boundary returned to Washington, upon completion of its work, in September 1851 (Emory Report, 10). Brevet Captain Edmund L. F. Hardcastle, who had been in charge of this party, reported on June 10, 1852, to Secretary of the Interior Alexander H. H. Stuart (D.S., United States–Mexico Boundary, envelope 11, Miscellaneous Correspondence, hereinafter cited as "Miscellaneous Correspondence"):

> The maps and notes, a catalogue of which is herewith enclosed, have been securely boxed and are now ready to be delivered to the Department. The notes, being mostly in duplicate, have been placed in separate boxes. . . . They are all addressed to Major W. H. Emory, who has had charge of this portion of the work.

The "catalogue" consists of two folded sheets of ruled blue paper on which are listed in writing the materials contained in three boxes. Some of the "Maps & Sketches" listed therein are " 'Plans A & B'—Gray's Map of Mex^{n} B^{y} from Pacific to Junction of Gila and Colorado—(signed by Commiss^{rs})" and " 'Southern part of Port of San Diego &c'—(Original by Gray)". Itemized are a "First or 'Rough' Set" and a "Finished Set" of map sheets that cover the boundary from the Pacific eastwardly; a "Junction Sheet" covering the boundary

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from the mouth of the Gila westwardly; and a few sheets which singly cover the whole section of the boundary. Various stages of completion are indicated for the several sheets, but only the sheet covering the initial point near the Pacific and the junction sheet are indicated as "finished".

Progress on the maps under both treaties was reported to Secretary of the Interior Robert McClelland by Captain George Thom, who was in charge of the work at Washington, in a letter dated October 27, 1854, reading in part (Miscellaneous Correspondence):

> The Maps of the Rio Bravo continue to be executed in the same style of art as when last inspected by you. . . .
> There still remains to be drawn about twenty sheets of that portion of the boundary (including the Islands and Soundings in their vicinity): also two large general index-Maps of the whole boundary from the Gulf of Mexico to the Pacific . . . together with several Maps of the country near the Gila. . . .
> I have placed in the hands of an engraver one of the boundary maps.

On August 24, 1855, Captain Thom reported further to Secretary McClelland (*ibid.*):

> All the engraving, and office work begun in 1853, is now nearly completed so far as relates to the survey of the boundary under the treaty of Guadalupe Hidalgo. It will be quite completed before the close of this year. The office work of the survey of the boundary under the treaty of Decr 30th 1853 (now being completed), is in a state of preparation, only awaiting the astronomical & surveying notes, to be brought to an early completion.

The arrival at Washington on June 21, 1856, "of the gentlemen who compose the Mexican Boundary Commission, for the purpose of closing their labors in conjunction with the Commission appointed on the part of the Government of the United States of America", was duly notified to Secretary of State Marcy by the Mexican Minister at Washington, General Robles, the names of the party being given as follows (D.S., 8 Notes from the Mexican Legation, June 27, 1856, translation; see also the answering note of July 2, 1856, wherein Marcy wrote that he acquainted "General Robles that he has communicated a copy of his note to the Secretary of the Interior, under whose more immediate direction will be completed the final labors of the Boundary Commission"; D.S., 7 Notes to the Mexican Legation, 77–78):

Commissioner:	Señor Don José Salazar Ilarregui.
1st Engineer:	Captain Don Francisco Jimenez.
2d Engineers:	Captain Don Agustin Diaz.
	Captain Don Luis Diaz.
	Captain Don Manuel Aleman.
Assistants:	Captain Don Ignacio Molina.
	Captain Don Julio Pinal.
	Engineer Don A. Espinosa y Cervantes.

The final meetings of the Commission were held on June 24 and 25, 1856 (Emory Report, 37–38). The record of the latter of these follows:

> Commission met at 9h 30m a.m., and the following preamble and resolution were adopted:

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Whereas Señor Salazar has stated it to be within his personal knowledge that some of the monuments erected by Mr. Emory were destroyed and others mutilated by the Indians, in the short space of time elapsing between the construction of these monuments and the final inspection of them by Mr. Salazar; and whereas it appears, from the maps and views which have been drawn, that the topographical features of the country, based upon astronomical determinations, are represented in sufficient detail to enable any intelligent person to identify the line at any required point; therefore, be it

Resolved, and agreed upon in joint commission, that these maps and views, duplicate copies of which will be made—one to be deposited with the United States, the other with the Mexican government—shall be the evidence of the location of the true line, and shall be the record to which all disputes between the inhabitants on either side of the line, as to the location of that line, shall be referred; and it is further agreed that the line shown by these maps and views shall be regarded as the true line, from which there shall be no appeal or departure.

Mr. Salazar proposed, with the view of carrying out the labors to the end in the soonest time, that the detailed maps be made, one copy by each commission, on a scale of $\frac{1}{60000}$, and a general map of the whole boundary on a scale of $\frac{1}{600000}$. That at the end, when the total work was done, the maps should be signed, to be given to the respective governments, and the two commissions should exchange the topographical and astronomical data by which each commission has arrived at its results in the field.

Mr. Emory stated that he had constructed the maps of the country from San Diego to the Colorado on the scale of $\frac{1}{30000}$; the projections for the maps of all the other portion were on a scale of $\frac{1}{60000}$. It would be exceedingly inconvenient, if not impracticable, to reconstruct them; he therefore proposed that Mr. Salazar's proposition should be so far modified as to leave the California section of the work to stand as it is, on a scale of $\frac{1}{30000}$. This was assented to by Mr. Salazar, and it was agreed as follows, viz:

That the detailed maps of the California section of the work shall be received on a scale of $\frac{1}{30000}$, the detailed maps for all the other portion of the boundary shall be completed on a scale of $\frac{1}{60000}$, and that a general map of the boundary shall be constructed on a scale of $\frac{1}{600000}$, which maps, when completed, shall form the evidence of the true line referred to in the agreement made this day.

Major Emory on September 29, 1857, wrote to Secretary of the Interior Jacob Thompson in part as follows (Emory Correspondence):

I have the honor to send herewith four Portfolios of Maps numbered from 1 to 54, representing the Boundary between the U.S. & Mexico from the Gulf of Mexico to the Pacific Ocean.

These Maps are accompanied by one General Map on a scale of one six million and four Sectional [Index] Maps on a scale of one six hundred thousand. The General Map and Sectional Maps Nos 3 & 4 are in the hands of the engraver, but will be replaced in the folios when engraved.

Referring to the fifty-four main maps (the maps placed in the four portfolios), Major Emory wrote (Emory Report, xiv): "They are too voluminous to admit of publication, and it is believed all the information which they contain is condensed in the five maps which are published." The fifty-four maps, as a set, have never been reproduced (see Moore, Digest, I, 754–55).

The labors of the Boundary Commission under the Gadsden Treaty ended on September 30, 1857; on the next day Major Emory wrote to Secretary Thompson (Emory Correspondence):

The joint Commission for running and marking the Mexican Boundary under the Treaty of Deb. 30th 1853 concluded their work yesterday and adjourned. I hand herewith the official journal kept by Señor Salazar and myself, also the

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journals two in number kept by my predecessors who were engaged on the Boundary under the Treaty of Guadalupe Hidalgo.

I also hand an official copy of views along the line, which are to accompany the Maps deposited with the Department of the Interior September 28th.

The publication of the Maps and Report of the Boundary Commission ordered by Congress has entailed upon me the necessity of retaining for a day or two some of the employes; I will at the earliest moment make you a full statement of its present condition, and at the same time make a proposition in regard to it, by which I may be permitted to join my Regiment.

THE ORIGINAL MAPS

The American originals of the boundary maps authenticated pursuant to the provisions of the Treaty of Guadalupe Hidalgo and the Gadsden Treaty consist of the following: fifty-four maps, or map sheets, covering the entire boundary from the Gulf of Mexico to the Pacific Ocean; four index maps, or map sheets, showing the positions of the fifty-four maps; and five map sheets which repeat, on larger scale and in greater detail than the main maps, those sections of the Rio Grande in which the location of the boundary channel determined the allocation of islands to the United States or to Mexico. All the maps mentioned are in the Division of Maps and Charts of The National Archives.

The fifty-four main maps are numbered consecutively from east to west. Each map is numbered in the upper right corner of the sheet, just above the border of the map, in this fashion: "Nº 1." The index maps and the detailed maps of the Rio Grande sections also are numbered consecutively from east to west. Their numbers are indicated in the titles, except in the fifth of the detailed maps, which is not numbered.

The scale on each map is indicated both in terms of the natural scale and by means of a bar marked in linear units. Of the fifty-four main maps, maps 1 to 45, which cover the boundary from the Gulf of Mexico to the Colorado River, are on a scale of 1:60,000 (1 inch equals 0.947 statute mile), while maps 46 to 54, covering the boundary from the Colorado River to the Pacific, are on a scale of 1:30,000 (1 inch equals 0.47 statute mile). The detailed maps of the Rio Grande sections are on a scale of 1:6,000 (1 inch equals 500 feet). The index maps are on a scale of 1:600,000 (1 inch equals 9.47 statute miles).

Measured between the innermost border lines, the dimensions of the maps are as follows: The smallest is 20½ inches high by 31 inches wide; the largest is 24½ inches high by 37½ inches wide; the others for the most part are about 22½ inches high by 35½ inches wide. The map sheets, over-all measurements, range in size from 24¾ inches high by 36¾ inches wide to 26½ inches high by 39½ inches wide.

All the fifty-four maps except map 29 have been recently crepe-lined and mounted on cloth, with the cloth folded forward on the map face to form a narrow binding. Map 29 retains an old linen mounting, and pieces of old blue-silk-ribbon binding are still attached to it.

The fifty-four maps which together cover the entire boundary

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except map 29; the five detailed maps of the Rio Grande sections; and the four index maps, except index map 1, are signed by William Hemsley Emory, United States Commissioner, and José Salazar Ilarregui, Mexican Commissioner, and all the signed maps except maps 30, 31, and 33 have over the signatures, in handwriting: "Examined, compared & agreed to" or its equivalent in Spanish: "Examinado y comparado concuerda". Over the signatures on map 30 there is written: "Examined & compared with map of mex Bd Com: and agreed to", and on maps 31 and 33, the Spanish equivalent: "Examinado y comparado con el mapa de la Comision mexicana y concuerdan". The signatures are "W. H. Emory" and "José Salazar Ylarregui", with slight variations in punctuation.

Maps 1–21, 23–26, 53–54, and the detailed maps of the Rio Grande sections, except the fifth map, are subscribed: "Verified, Geo. Thom Capt. Top[l] Engr[s]". Index map 2 is subscribed: "Verified by N. Michler Lt. Top[l] Engrs. U.S.A."; the same words, but in draftsman's lettering, appear on index map 4. The remaining maps are not verified.

The individual maps vary in style of lettering, abbreviations, capitalization, and punctuation. In this description the style of the originals is followed in quotations from individual maps; when generalizations are made concerning titles common to several maps, the style most typical is followed.

The main title on each of the fifty-four maps is: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO". Each title includes, in addition, reference to the Joint Commission under one or the other of the treaties, to the year of the survey, and to the astronomer, the surveyor, and the assistant surveyors who worked in the area covered by the map sheet.

Map 1 covers the boundary from a point in the Gulf of Mexico, "three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte . . . from thence, up the middle of that river, following the deepest channel", to a point above Brownsville, Texas. It is entitled, "BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO; Surveyed in 1853 under the direction of Bvt. Major W. H. EMORY, Corps of Topographical Engineers, Chief Astronomer and Surveyor; by Mr. CHA[s] RADZIMIŃSKI, Prin[cl] Ass[t] Surveyor, and Mr. ARTHUR SCHOTT, Ass[t] Surveyor." On the face of the map is a note in draftsman's lettering which reads as follows:

Note—This map is compiled from surveys made
in 1853 {by Mr. Cha[s] Radzimiński, Prin[cl] Surveyor U.S.B.C.
{and Mr. Arthur Schott, Assistant d[o]
in 1854 by Mr. W. E. Greenwell, Ass[t] Coast Survey.
in 1847 by Lieut. J. D. Webster, Corps of Top[l] Eng[rs]

Major W. H. Emory's Astron[l] Station (marked ★) near the mouth of the Rio Bravo del Norte, as determined in 1853, is in Long. 97°07′37″.3 West of Greenwich, Lat. 25°57′21″.8 North.

Old Fort Brown as determined by Maj. Emory in 1853 is in Lat. 25°53′16″.3

The soundings are expressed in fathoms

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Maps 2 to 28 cover the boundary in the Rio Grande from a point just above Brownsville nearly to El Paso. Their titles are the same as the title on map 1, except as they vary in the date of the survey and in the names of the assistant surveyors.

The year 1853 is given as the date of survey on maps 1, 2, 3, 4, 5, 6, 7, 16, and 17; 1852–53 on map 15; and 1852 on maps 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

The titles on maps 1 to 28 indicate that the boundary covered by those maps was surveyed under the direction of Brevet Major W. H. Emory, Corps of Topographical Engineers, Chief Astronomer and Surveyor. The persons indicated on the maps as having carried out the survey, their names given here as they appear on the maps, are: on maps 1 and 4, Charles Radziminski, Principal Assistant Surveyor, and Arthur Schott, Assistant Surveyor; on maps 2 and 3, Charles Radziminski, Principal Assistant Surveyor; on maps 5 to 14, Arthur Schott, Assistant Surveyor; on map 15, Lieutenant N. Michler, Jr., Corps of Topographical Engineers, and Arthur Schott, Assistant Surveyor; on maps 16 and 17, Lieutenant N. Michler, Jr., Corps of Topographical Engineers; on maps 18 to 21, M. T. W. Chandler, Assistant Surveyor; on map 22, M. von Hippel and M. T. W. Chandler, Assistant Surveyors; and on maps 23 to 28, M. von Hippel, Assistant Surveyor.

The latitudes and longitudes of astronomical stations, as determined by Major Emory and by Lieutenant Michler, are given in notes on the maps; other stations along the Rio Grande for the most part are indicated merely by their location on the maps. Major Emory's stations are identified as follows: Edinburgh, map 3; Ringgold Barracks and Roma, map 4; Bellville, map 6; Fort McIntosh, map 8; Eagle Pass, map 12; "opposite Presidio del Norte",[1] map 22; and "near the mouth of the Cañon", map 27. Notes on Lieutenant Michler's stations 1 to 7 are given on maps 15, 16, and 17.

Annotations initialed by Major Emory appear on three maps as follows: map 23, "These plls should be all shifted South to correspond with the Lat of Vado de Piedras (29°52′36″8.) W. H. E."; map 24, "The plls of Lat on this Map should be shifted to bring IX in Lat: 30°5′.24″ W. H. E."; and map 25, "The parallels on this map should be shifted to bring Pilares in Lat 30°25′.9″ W. H. E."

At the lower right on each map the name of the draftsman is indicated, for example: on maps 1, 27, and 28, "Drawn by Francis Herbst". Other draftsmen named and the maps on which their names appear are: William Luce, maps 2, 6, 7, 11, and 14; Charles Mahon, maps 3, 4, 8, 10, 22, 23, 25, and 26; Theodore H. Oehlschlager, maps 5, 9, 12, 16, 21, and 24; J. R. P. Mechlin, map 13; Joseph Welch, maps 15 and 20; John E. Weyss, map 17; E. Freyhold, map 18; and M. C. Grilzner, map 19.

Map 29 covers the boundary in the Rio Grande from the latitude of the town of "San Elceario" (San Elizario, Texas) to the "initial point" in that stream at 31°47′ north latitude, together with the

[1] Ojinaga, Chihuahua (opposite Presidio, Texas).

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eastern portion of the boundary section which extends westward from that point along the parallel of 31°47′. The map is entitled: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO shewing the INITIAL POINT under the Treaty of December 30th 1853, Astronomically determined and surveyed in 1855, under the direction of WILLIAM H. EMORY, U.S. Commissioner. Latitude and Longitude by W. H. EMORY, assisted by J. H. CLARK, Triangulation and Topography by M. von HIPPEL assisted by J. E. WEYSS Projected & drawn by F. HERBST." No table or note showing positions astronomically determined is given on the map. On the old cloth mounting appears in hand lettering: "Boundary between the United States and Mexico 1855 8–9".

This map 29, an original, was signed by the American Commissioner and verified by Captain George Thom, of the Topographical Engineers, United States Army. Probably it was signed by the Mexican Commissioner also. Two signatures and the verification have been erased. Commissioner Emory's signature, written as it appears on other signed originals, is identifiable despite erasure, as is also the verification by Captain Thom. Only an erasure appears in the position where the Mexican Commissioner presumably signed. Above the erasures appears this note in draftsman's lettering:

This Map has been compared with the corresponding Map of the Mexican Commission and is found to represent the true Boundary The two Maps agree, except in the bed of the River, which circumstance is the consequence of the two Surveys being made at different periods, six months apart, during which time the River changed its bed, as it is constantly doing, but always within narrow limits.

Filed with this map 29 is a printed copy thereof which is crepelined, mounted on cloth, and bound after the manner of the signed originals. It is not a signed copy, however. The lettered note above quoted and the names of the Commissioners that appear on this bound printed copy were printed from an engraved plate.

When the case of "El Chamizal" [1] (a tract of about 637 acres lying in El Paso, Texas) was under consideration by the International Boundary Commission organized in 1893 under the convention of March 1, 1889 (26 Statutes at Large, 1512–17), the matter of the unsigned American original was made the subject of correspondence between the American Commissioner, Colonel Anson Mills, and the Secretary of State. In a letter, dated at El Paso December 11, 1895, to Secretary of State Richard Olney, Colonel Mills wrote (Proceedings of the International (Water) Boundary Commission, United States and Mexico, Treaties of 1884 and 1889, I, 45):

I have the honor to enclose herewith the original copy of the journal of the Joint Commission of this day, by which you will observe that in addition to the difficulties and embarrassments surrounding the Chamizal Case No. 4, mentioned in my letter of the 10th instant, new difficulties have arisen from the facts stated in the journal, the principal of which is that the photographic copy of the original map on file in the State Department, Sheet No. 29 of the Emory Survey, is without the signature of either of the Commissioners and the photograph shows some evidence that it had been duly signed and erased, and as this United States map

[1] Regarding this case, see Hackworth, Digest of International Law, I, 409–17.

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bears a note upon its face to the effect that it was made six months subsequent to the map of the Mexican Commission, and showed considerable discrepancy, the greatest being probably 150 yards at or near the point where the Mexican claim of avulsion is alleged to have taken place. The Mexican Commissioner declined positively to give this map any official consideration.

At a meeting of the Commission at El Paso on March 23, 1896, the United States Commissioner presented a communication from the Secretary of State dated February 27, 1896, "instructing him to abandon the United States Sheet No. 29, of the Emory and Salazar Survey, . . . and to rely wholly upon the Mexican copy of said map, Sheet No. 29, when presented and duly authenticated, for the determination of all cases hereafter to arise in the locality covered by it" (*ibid.*, 48).

In the Proceedings of the International (Water) Boundary Commission, previously cited, there appear, on "pages" 99 and 100, two double-page copies of map 29, each bearing a supplementary title, boxed in double lines. One of the supplementary titles reads: "Photolithographic Copy of Major Emory's Original United States Sheet No. 29 of the Commission of 1853–1855. Rejected by Mexico Because of the Absence and Evident Erasure of Signatures, and Abandoned by the United States as Having No Legal Significance"; the other reads: "Photolithographic Copy of Salazar Ilarregui's Original Mexican Sheet No. 29, of the Commission of 1853–1855. Accepted and Adopted by Both the United States and Mexico, as the Only Legal and Authoritative Map Since the Rejection and Abandonment of Emory's United States Sheet No. 29". Below each such title are printed the signatures of Anson Mills and Jacobo Blanco, Commissioners, and the signatures of the Consulting Engineers. The place and date in each case are given as "El Paso, Texas, March 1st 1899".

The first of the photolithographic copies is of the American original of map 29 described in these notes. It is without color, as is the original drawing, and is "reduced one half". The other copy, of the Mexican original, is reproduced in color and likewise "reduced one half".

The photolithographic copy of the Mexican original bears a table of positions astronomically determined. Such a table does not appear on the American original but does appear on the printed copper-plate copies filed with the American originals; the positions do not agree precisely with those given on the reproduced Mexican original.

The signatures and abbreviated titles of Emory and Salazar on the "Original Mexican Sheet No. 29" as reproduced in the Proceedings of the International (Water) Boundary Commission are similar to those on signed American originals.

Maps 30 to 45 cover the boundary from the Rio Grande to the Colorado River and (map 45) northward along that stream. Maps 30 to 32 cover the boundary along the parallel of 31°47′ north; maps 32 and 33, the boundary along the meridian of 108°13′24″.05 west; maps 33 to 38, the boundary along the parallel of 31°20′ north; maps 38 to 44, the azimuth line from the intersection of the parallel of

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31°20′ with the meridian of 111° to the Colorado; and map 45 covers the two "initial points" on the Colorado River. The main title on each of these maps is: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of December 30th 1853."

On each map the title continues: "Surveyed in 1855, under the direction of WILLIAM H. EMORY. U.S. Commissioner"; on maps 38 to 45 this is added thereto: "and JOSÉ SALAZAR YLARREGUI Mexican Commissioner"; and in each case the personnel concerned with the survey is then named. On maps 30 to 36 the titles indicate: "Triangulation and Topography by M. VON HIPPEL, assisted by J. E. WEYSS"; on map 37: "Triangulation and Topography by M. VON HIPPEL, assisted by J. E. WEYSS of east end; M. T. W. CHANDLER, assisted by F. WHEATON of west end"; and on maps 39 to 45: "Triangulation and Topography by N. MICHLER, Lt. Topl Engrs U.S.A. assisted by A. C. V. SCHOTT, Asst Surveyor, and FRANCISCO JIMENEZ, 1st Engineer, assisted by M. ALEMAN and A. DIAZ, 2nd Engineers, Mexican Commission, both parties working conjointly".

The full title continuation on map 38 is: "Surveyed in 1855, under the direction of WILLIAM H. EMORY, U.S. Commissioner, and JOSÉ SALAZAR YLARREGUI Mexican Commissioner, Latitude and Longitude of Observatory by J. H. CLARK, assisted by H. CAMBELL. Triangulation and Topography by N. MICHLER, Lt. Topl Engrs U.S.A., A. C. V. SCHOTT, and M. T. W. CHANDLER, U.S. Commission, and FRANCISCO JIMENEZ, 1st Engineer, M. ALEMAN and A. DIAZ, 2nd Engineers, Mexican Commission. drauwn by J. E. WEYSS."

The draftsmen named and the maps on which their names appear are William Luce, maps 30, 37, 39, and 40; John E. Weyss, maps 31, 35, and 38; Joseph Welch and Francis Herbst, map 32; Felix Nemegyei, map 33; Maurice von Hippel and Felix Nemegyei, map 34; Albert de Zeyk, map 36; Charles László, map 43; H. C. Evans and Charles László, map 44; no draftsman is indicated on maps 41, 42, and 45.

Map 44 shows the boundary extending southeastwardly from the initial point on the Colorado across the "Neutral Ground between the Co-Co-Pas and the Yu-mas or Co-Cha-Nos", and ascending the uplands that lie to the east. The position of that initial point on the Colorado is marked by a symbol, and the monuments are numbered from west to east.

Map 45 covers the Colorado River section of the boundary. It shows the initial point several miles below the junction of the Gila River with the Colorado from which the boundary extends westwardly to the Pacific, and the initial point "twenty english miles below the junction of the Gila and Colorado rivers" (Article 1) from which the boundary extends to the east. The map bears the following table:

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Positions Astronomically determined.

Stations (marked ★)	Latitude (North)	Longitude (West from Greenwich)
Monument (near Junction of the Rio Gila & Colorado)	32°43′31″06	114°36′22″20
Initial Point on the Rio Colorado (in River)	32°29′44″45	114°48′44″53
Monument Nº II. (on the desert & made of cast iron)	32°29′01″48	114°46′14″43

The Magnetic Variation at Initial Point in March 1855, 12°37′30″ East of North.

Azimuth of the Boundary-California-Line (from the Rio Colorado to the Pacific Ocean) at the Junction of the Gila and Colorado, 85°34′47″49, South West.

Azimuth of the Boundary-Sonora-Line (from the Rio Colorado to the Intersection of the 111th Meridian west of Greenwich, and parallel 31°20′ North) at the Initial Point on Colorado, 71°20′43″08, South East.

Azimuth of Sonora-Line at Monument Nº II, 71°19′23″18, South East.

Astronomical Determinations by Lieuts. Whipple, Michler and Señor Jimenez.

The position of "Monument Nº VI", the monument farthest east on the line from the Colorado to the Pacific, is shown on map 45. The former "Monument Nº VII", which had been located near the junction of the Gila and Colorado Rivers under the Treaty of Guadalupe Hidalgo, is indicated in lettering on the map, just to the west of the lower reaches of the Gila, but no symbol marking the location of the monument is discernible. The initial point on the Colorado "twenty english miles below the junction of the Gila and Colorado rivers" is indicated by a star in the middle of the river. Lieutenant Michler, who ran the boundary eastward from this point, wrote (Emory Report, 114):

> As it was impossible to mark the exact initial point in the middle of the stream, Mr. Jimenez and myself established the first monument 3,164.84 feet distant from it, in the direction of the line [i.e., from west to east]. . . . Monument II, of cast iron, and pyramidal in form, is placed on the edge of the sand plain, as this position is more permanent and free from the action of freshets in the Colorado.

Lieutenant Michler's observatory, referred to as point "F'", was "distant from the junction of the Colorado and Gila, in a straight line, 104024.34 feet; the azimuth of this line, at the point 'F',' is 36°14′10″ N.E., and its length is 1575.66 feet short of twenty miles" (Emory Report, 169).

"The initial point, in the middle of the Colorado, was determined by prolonging the line from the junction, passing through 'F'' 1575.66 feet, . . . thus laying off a radius of twenty miles. At the extremity of this line, a perpendicular was erected, or, in other words, a tangent was drawn to the circumference of a circle with that radius and the junction as a centre, and, by means of the following table, the circle was described" (*ibid.*, 169–70). Following the course of the Colorado, the initial point was located 27.9 miles below the junction (*ibid.*, 114).

According to the determinations of the Commission under the

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Gadsden Treaty, the latitude of the junction was 32°43′32″.3 north and the latitude of the initial point on the Colorado was 32°29′44″.45 north (*ibid.*, 166–67). Thus the latitude of the initial point was about 15.8 miles south of the latitude of the junction.

It is to be remembered that the distance of twenty miles (20.1 miles by map 45) from the junction of the Gila and Colorado to the southerly of the two initial points on the Colorado was measured from the junction, not due south, but well to the west of south; and that the boundary runs from that southerly initial point up the Colorado, not to its junction with the Gila, but only to the northerly of the two initial points on the Colorado, which is nearly seven miles almost west of the junction point. See the discussion in volume 5, pages 415–19, and the map of November 1849 facing page 418, where the northerly initial point on the Colorado is shown just to the south of "Emigrant crossing".

Maps 46 to 54 cover the boundary from the Colorado to the Pacific Ocean. The main title on each of these maps is: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO;". On maps 46 to 53 the title continues: "determined under the direction of Bvt. Major W. H. EMORY, Corps Topographical Engineers, Chief Astronomer; surveyed in 1850, by Bvt. Capt. [on maps 46 and 47, "Capt."] E. L. F. HARDCASTLE, Corps Top[l] Eng[rs]. Honble. J. B. WELLER, U.S. Commissioner." The continuation on map 54 is: "Determined Astronomically in 1849, Bvt. Major W. H. EMORY. Top[l] Eng[rs], Chief Astronomer. Topography By By[s] Capt. E. L. F. Hardcastle, Corps of Top. Eng[rs] and Andrew B. Gray, U.S. Surveyor, in 1849. 1850. Honble. J. B. WELLER. U.S. Comm[r]".

The draftsmen named on maps 46 to 54, and the maps on which their names appear, are: Theodore H. Oehlschlager, maps 46, 47, 48, and 49; P. Harry, maps 51 and 52; and Joseph Welch, maps 50, 53, and 54.

On map 54, offshore and parallel to the coast, are the words "Initial Point"; and a short distance inland, parallel to the coast, are the words "Monument No. I". The symbol marking the position of the initial point, "one marine league due south of the southernmost point of the Port of San Diego", is scarcely identifiable.

The five sheets covering the islands in sections of the Rio Grande are entitled: "ISLANDS IN THE RIO BRAVO DEL NORTE. Shewing the main channel and to which country they belong under the Treaty of GUADALUPE HIDALGO; Surveyed in 1853 [on the fifth sheet, "1852"], under the direction of Bvt. Major W. H. EMORY, Corps of Topographical Engineers, Chief Astronomer and Surveyor". To this title there is added: on sheet 1, "by Mr. CHA[s] RADZIMINSKI, Principal Assistant Surveyor"; on sheets 2, 3, and 4, "by Mr. ARTHUR SCHOTT, Ass[t] Surveyor"; and on the fifth sheet, "by G. C. GARDNER Ass[t] Surveyor". Preceding each title on sheets 1 to 4, the sheet is numbered in this fashion: "Sheet N° 1". The five sheets were drawn by Charles László.

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The fifth of these sheets is annotated and initialed by Major Emory in this manner: "See Sheet N° 22. W. H. E." It is an enlargement of a section of the Rio Grande to the east of "Presidio del Norte" which is covered by map 22.

Major Emory wrote thus concerning the islands shown on the five sheets (Emory Report, 65):

> One of the most important duties of our survey was to determine to which side the islands in the Rio Bravo belonged. For this purpose it was agreed between the Mexican commissioner and myself to sound the river on each side of every island, and the centre of the deepest channel should be the boundary line. From the mouth of the river to Ringgold Barracks there are eleven islands, marked on the map from 1 to 11, commencing at the mouth, and this order of numbering the islands is observed until we reach the parallel of 31°47′, where the boundary leaves the river. The sheets of the boundary, on a scale of 1/60000, are numbered from 1 to 54. . . . The islands are numbered on these sheets to indicate their geographical position, but they are represented also on separate sheets on a scale of 1/6000, to show their topographical and hydrographic details, and to exhibit upon what data they have been allotted to the United States or to Mexico.
>
> . . . The allotment of all the islands was made upon the condition of things as they existed when the boundary was agreed upon.

The four index maps show diagrammatically the positions of maps 1 to 54. Index map 1 shows the positions of maps 1 to 13; index map 2, the positions of maps 14 to 29; index map 3, the positions of maps 29 to 39; and index map 4, the positions of maps 40 to 54. The sheets bear the following titles:

INDEX MAP N° 1. RIO BRAVO DEL NORTE SECTION OF BOUNDARY BETWEEN THE UNITED STATES & MEXICO; Agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO; Surveyed in 1852–3 under the direction of Bvt. Major W. H. EMORY, Corps of Topographical Engineers, Chief Astronomer and Surveyor, by Mr. CHAS RADZIMINSKI, Principal Assistant Surveyor. Mr. ARTHUR SCHOTT, Assistant Do. [i.e., Assistant Surveyor].

INDEX MAP N° II. RIO BRAVO DEL NORTE SECTION OF BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO; Surveyed in 1852–3 under the direction of Bvt. Major W. H. EMORY Corps of Topographical Engineers, Chief Astronomer and Surveyor.

INDEX MAP N° 3. BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of December 30th 1853. Surveyed in 1855, under the direction of Major W. H. EMORY, U.S. Commissioner.

MAP N° 4 BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaties of GUADALUPE HIDALGO; and DECEMBER 30th 1853. Surveyed in 1849 and 1854–55. John B. Weller. U.S. Commr in 1849 & Wm H. Emory. Major. First Cavy U.S. Commr in 1854 & 55. Published by authority of Honorable J. THOMPSON. Secretary of the Interior.

Index map 1 was drawn by Francis Herbst and Thomas Jekyll; index map 2, by Francis Herbst; index map 3, by Francis Herbst and Thomas Jekyll ("& John de la Camp", according to an annotation in pencil). No draftsman is indicated on index map 4.

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MAPS INTENDED TO ACCOMPANY THE EMORY REPORT

Major Emory's plans for bringing his work to a conclusion are set forth in a lengthy communication to Secretary Thompson under date of October 7, 1857, from which the following excerpts are taken (Emory Correspondence):

> Congress at its last Session ordered an edition of my report published and I have now to report to you the state of that work and to make some suggestions in regard to its future progress and to ask your instructions in regard thereto.
>
> The first Volume, embracing my own report, has been printed with all the illustrations, for more than three months, but is not distributed in consequence of the non-completion of the General Map and the Geological Map, which, by contract, were to have been finished in September. . . .
>
> Index maps 1, 2, 3 & 4 may or may not be issued with the report as Congress or the Secretary may direct. . . .
>
> On the 1st of this month, all the employees of the Boundary Commission were discharged, except Mr Jekyll, Draughtsman, and one Clerk . . . and . . . Messenger. . . . I recommend that Mr Jekyll be retained till further orders; his presence is necessary with the Map Engraver. . . .
>
> I request to be permitted to retain the General Supervision over the preparation and publication of my work, and, for this purpose ask to be allowed to retain my per diem . . . & to be allowed one room . . . as an Office for the collection, revision and arrangement of proofs and Manuscripts.
>
> Should these requests be acceded to, I beg to be permitted to report to the War Department, for duty with the Army. My Regiment is stationed at Fort Leavenworth and my military duties will not materially interfere with that sort of General Supervision which, it is essential to my personal reputation that I shall retain over my work, until it goes to the Public. My connection with the Boundary Survey has involved the necessity of retaining my family here at Washington, which, otherwise, could have gone with me to the West.

Secretary Thompson wrote to Major Emory on October 19, 1857, concurring in the main with his suggestions and instructing him to turn over to Albert H. Campbell, General Superintendent of Pacific Wagon Roads in the Department of the Interior, all the engraved plates [1] and other property pertaining to the Commission. The instruction continued (D.S., United States–Mexico Boundary, Department of the Interior Letter Book, January 19, 1849–November 16, 1858, 321–22, hereinafter cited as "Letter Book"):

> You are permitted to retain the general supervision of the preparation and publication of your work; and all proofs and manuscripts of the unfinished portions of it will be submitted for your certification, if practicable, before the approval of the Department be given.

Soon after Major Emory rejoined his regiment, he received a letter of November 23, 1857, from Secretary Thompson saying that the title page of the first volume of the boundary survey report was not "a proper one for a work of its character" and asking that it be

[1] Most of the engraved plates were not of maps but of pictorial views and of botanical and geological specimens. An enumeration of the boundary material turned over to Campbell on October 19, 1857, for future delivery to the Superintendent of Public Printing, includes: "4 copper plates (Index Maps 1, 2, 3, & 4) 3 & 4 are in the hands of Seibert"; "1 copper plate Mouth of Rio Bravo, alto & basso of same"; "1 copper plate El Paso sheet, basso of same"; "1 copper plate San Diego sheet" (D.S., United States–Mexico Boundary, envelope 7, Abstracts, Estimates, Proposals, and Contracts Relating to the Emory Report).

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modified in accordance with forms submitted by the Secretary, which would give credit to the Department of the Interior (*ibid.*, 327–28).

In a reply dated at Fort Riley, Kansas Territory, December 13, 1857 (Emory Correspondence), Major Emory defended the title given his document by the President in his message to Congress and used by Secretary of the Interior McClelland. He wrote:

> It was therefore not only natural but proper for me to adopt as a title for my report that which had occurred to the minds of others as the most suitable to identify it. The only apparent omission in the title which occurred to me at the time was, that of the words "Department of the Interior" but that could not be inserted without also inserting the Department of State which had charge of the work and gave all the original instructions, and it was deemed of little consequence because full and ample reference was made to both Departments in the Report.

Secretary Thompson on December 19, 1857, instructed the Superintendent of Public Printing to "cancel the title page to Maj Emory's Report (1st Vol) on the U. States and Mexican boundary Survey and substitute the accompanying one" (Letter Book, 329–30). The draft of a title page therewith, apparently intended for both the House and Senate prints, has the same wording for the title as that which appears in Senate Executive Document No. 108, 34th Congress, 1st session (serial 832): "Report on the United States and Mexican Boundary Survey made under the direction of the Secretary of the Interior by William H. Emory Major First Cavalry and U.S. Commissioner". But of copies of the report which have been examined, that printed as House Executive Document No. 135, 34th Congress, 1st session (serial 861), includes on the title page no reference to the Department or Secretary of the Interior; its title reads: "United States and Mexican Boundary Survey. Report of William H. Emory Major First Cavalry and U.S. Commissioner".

Notwithstanding the optimism of Major Emory as to the possibility of supervising completion of the maps while on duty with his regiment, the correspondence reveals that difficulties arose. This excerpt is from a letter of December 19, 1857, addressed by Campbell to Major Emory, "Commanding Ft. Riley Kansas Terry" (Letter Book, 330–32):

> Your note of the 28th ult. came to hand on the 15th inst. I sent it with Mr Jeykll to Mrs Emory to see and advise with her upon the Subject, before I brought the matter before the Secretary for advisement. I sent to her to ascertain if by any possible arrangement the proof of the Genl map could be revised here in order to save time. You will readily perceive that it will take 30 days to send and receive a package from you and allowing a week to read the proof and 4 weeks to print the edition ordered and 4 weeks to bind the vol. it will delay the distribution of the report at least three months. When the Secretary from the understanding that the map was to be finished on Jany 1st and that Mr Jeykll and myself could correct the proof has pledged himself in his report to have the vol. issued early in January.
>
> Mrs Emory signified her willingness to assist all she could, but said that you were very positive about such matters &c She also sent the books stating that you might want them if it was not decided to wait your revisal. I will send them with the proofs which I shall have on Monday (the 21st)

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A letter written to Secretary Thompson by Major Emory at Fort Riley on January 17, 1858, includes these passages (Emory Correspondence):

> Your letter of the 31st states that [index] maps 3 & 4 are done, supposing from this the work on them closed I have not returned 4 and should not return 3, but there are some ommissions so important, yet so easily added, I hope it will not be too late to adopt them. These proof maps were not received by me until they were pronounced at the Dept *done.*
>
> The same remark applies to Gnl Map, . . . as it was mailed only two days before it was to be called in.

A letter of Campbell to Major Emory of January 27, 1858, includes this paragraph (Letter Book, 339):

> Enclosed please find a proof of the General Map as completed. I notified the Supt of Pub. Printing that the plate was ready for him whenever he was ready to print. He informed me that he had ordered the paper but it will not be manufactured for some time. I shall turn over the plate to-morrow, and today I shall turn over to the Supt the four index maps and the El Paso and Rio Grande plates. The committee will probably permit but a reasonable edition of them.

So far as the correspondence examined reveals, the general map was the only one of the maps submitted to Major Emory in the West, that was approved by him for publication. That map was approved in a letter of February 21, 1858 (Emory Correspondence).

On the same date as the letter last cited, Major Emory addressed Secretary Thompson, stating that he found it necessary to be relieved from further duty in the preparation of the boundary report, though he indicated that he would continue to correct the proofs, etc., sent to him until he was notified that other arrangements had been made (Emory Correspondence); and Major Emory was so relieved, effective March 31 (Letter Book, 350, letter of March 13, 1858, from Secretary Thompson to Major Emory).

In response to a resolution of the Senate of March 12, 1858, requesting information on the progress of the boundary report, Secretary of the Interior Thompson stated under date of March 24 (Senate Executive Document No. 37, 35th Congress, 1st session, serial 929, p. 1):

> The first volume of the report of Major W. H. Emory on the United States and Mexican boundary survey is completed, and nearly ready for distribution. . . .
>
> There are to accompany the report, but not to be bound in the volumes, four index maps on copper, showing the boundary line from the Gulf of Mexico to the Pacific ocean, and two sectional maps on copper, *i.e.*, initial point of boundary on Gulf of Mexico, and initial point of boundary near El Paso. These maps are completed, and in the hands of the Superintendent of Public Printing.

No maps were published with the first volume of the Emory Report other than the general map and the geological map which are bound into the volume. However, a limited number of proof impressions were made of the index maps and of maps 1 and 29 of the main series. Several of these proof impressions are filed with the originals.

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In a letter of January 5, 1858, to Senator William M. Gwin, of California, Chairman of the Select Committee on the Pacific Railroad, Secretary Thompson wrote: "There are some proof impressions of Index Maps Nos 3 & 4 being printed for the use of the Department." Three sets of those proofs were sent to Senator Gwin on the following day (Letter Book, 335, 336).

Publication of the first volume of the Emory Report is recorded in a letter addressed to Major Emory by Secretary Thompson on May 15, 1858, in which he acknowledged receipt from Mrs. Emory of twenty copies of the volume (*ibid.*, 371).

Treaties and Other International Acts Applicable to the Boundary Between the United States and Mexico

1. Treaty of Guadalupe Hidalgo. Treaty of Peace, Friendship, Limits, and Settlement (with additional and secret article which was not ratified), with Map of the United Mexican States and with Plan of the Port of San Diego, signed at Guadalupe Hidalgo February 2, 1848. (Treaty Series No. 207; 9 Statutes at Large, 922–43.) Originals of the treaty and additional and secret article in English and Spanish. Treaty and additional and secret article submitted to the Senate February 23, 1848. (Message of February 22, 1848.) Map of the United Mexican States and Plan of the Port of San Diego submitted to the Senate March 7, 1848. Resolution of advice and consent, with amendments (including the striking out of the additional and secret article), March 10, 1848. Ratified by the United States March 16, 1848. Ratified by Mexico May 30, 1848. Ratifications exchanged at Querétaro May 30, 1848. Proclaimed July 4, 1848.

2. The Gadsden Treaty, signed at Mexico City December 30, 1853. (Treaty Series No. 208; 10 Statues at Large, 1031–37.) Original in English and Spanish. Submitted to the Senate February 10, 1854. Resolution of advice and consent, with amendments, April 25, 1854. Ratified by the United States June 29, 1854. Ratified by Mexico May 31, 1854. Ratifications exchanged at Washington June 30, 1854. Proclaimed June 30, 1854.

3. Convention Defining the Manner in Which the Monuments Marking the International Boundary Are to Be Restored to Their Proper Places and New Ones Erected, signed at Washington July 29, 1882. (Treaty Series No. 220; 22 Statutes at Large, 986–90.) Original in English and Spanish. Submitted to the Senate August 3, 1882. (Message of August 1, 1882.) Resolution of advice and consent August 8, 1882. Ratified by the United States January 29, 1883. Ratified by Mexico November 7, 1882. Ratifications exchanged at Washington March 3, 1883. Proclaimed March 5, 1883.

4. Convention Touching the Boundary Line between the Two Countries Where It Follows the Bed of the Rio Grande and the Rio Colorado, signed at Washington November 12, 1884. (Treaty Series No. 226; 24 Statutes at Large, 1011–14.) Original in English

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and Spanish. Submitted to the Senate December 3, 1884. Resolution of advice and consent March 18, 1885. Modifications proposed by the Government of Mexico December 11, 1885. Resubmitted to the Senate with said modifications February 8, 1886. (Message of February 4, 1886.) Resolution of advice and consent June 23, 1886. Ratified by the United States July 10, 1886. Ratified by Mexico August 11, 1886. Ratifications exchanged at Washington September 13, 1886. Proclaimed September 14, 1886.

5. Additional Article Extending the Time Fixed by Article 8 of the Convention of July 29, 1882, signed at Washington December 5, 1885. (Treaty Series No. 229; 25 Statutes at Large, 1390–92.) Original in English and Spanish. Submitted to the Senate December 14, 1885. Resolution of advice and consent, with amendment, June 21, 1886. Ratified by the United States June 23, 1887. Ratified by Mexico May 18, 1887. Ratifications exchanged at Washington June 27, 1887. Proclaimed June 28, 1887.

6. Convention to Revive the Provisions of the Convention of July 29, 1882, and to Extend the Time Fixed by Article 8 Thereof, signed at Washington February 18, 1889. (Treaty Series No. 231; 26 Statutes at Large, 1493–96.) Original in English and Spanish. Submitted to the Senate February 28, 1889. (Message of February 27, 1889.) Resolution of advice and consent March 26, 1889. Ratified by the United States April 30, 1889. Ratified by Mexico August 14, 1889. Ratifications exchanged at Washington October 12, 1889. Proclaimed October 14, 1889.

7. Convention to Facilitate the Carrying Out of the Principles Contained in the Convention of November 12, 1884, signed at Washington March 1, 1889. (Treaty Series No. 232; 26 Statutes at Large, 1512–17.) Original in English and Spanish. Submitted to the Senate March 2, 1889. Resolution of advice and consent, with amendment, May 7, 1890. Ratified by the United States December 6, 1890. Ratified by Mexico October 31, 1890. Ratifications exchanged at Washington December 24, 1890. Proclaimed December 26, 1890.

8. Convention Further Extending the Time Fixed by Article 8 of the Convention of July 29, 1882, signed at Washington August 24, 1894. (Treaty Series No. 235; 28 Statutes at Large, 1213–15.) Original in English and Spanish. Submitted to the Senate August 27, 1894. Resolution of advice and consent August 27, 1894. Ratified by the United States September 1, 1894. Ratified by Mexico October 3, 1894. Ratifications exchanged at Washington October 11, 1894. Proclaimed October 18, 1894.

9. Convention Extending the Duration of the Convention of March 1, 1889, signed at Washington October 1, 1895. (Treaty Series No. 236; 29 Statutes at Large, 841–43.) Original in English and Spanish. Submitted to the Senate December 17, 1895. Resolution of advice and consent December 17, 1895. Ratified by the United States

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December 20, 1895. Ratified by Mexico November 5, 1895. Ratifications exchanged at Washington December 21, 1895. Proclaimed December 21, 1895.

10. Protocol Providing for the Ascertainment of the Facts Relating to the Irrigation of the Arid Lands in the Valley of the Rio Grande and to Other Matters, signed at Washington May 6, 1896. Original in English and Spanish. Effective upon signature and not submitted to the Senate. (The English version is printed in Proceedings of the International (Water) Boundary Commission, United States and Mexico, Treaties of 1884 and 1889, II, 275.)

11. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington November 6, 1896. (Treaty Series No. 238; 29 Statutes at Large, 857–59.) Original in English and Spanish. Submitted to the Senate December 9, 1896. Resolution of advice and consent December 10, 1896. Ratified by the United States December 15, 1896. Ratified by Mexico December 3, 1896. Ratifications exchanged at Washington December 23, 1896. Proclaimed December 23, 1896.

12. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington October 29, 1897. (Treaty Series No. 240; 30 Statutes at Large, 1625–27.) Original in English and Spanish. Submitted to the Senate December 15, 1897. (Message of December 7, 1897.) Resolution of advice and consent December 16, 1897. Ratified by the United States December 20, 1897. Ratified by Mexico November 12, 1897. Ratifications exchanged at Washington December 21, 1897. Proclaimed December 21, 1897.

13. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington December 2, 1898. (Treaty Series No. 241; 30 Statutes at Large, 1744–46.) Original in English and Spanish. Submitted to the Senate December 7, 1898. (Message of December 6, 1898.) Resolution of advice and consent December 8, 1898. Ratified by the United States December 12, 1898. Ratified by Mexico December 15, 1898. Ratifications exchanged at Washington February 2, 1899. Proclaimed February 3, 1899.

14. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington December 22, 1899. (Treaty Series No. 243.) Original in English and Spanish. Submitted to the Senate January 4, 1900. Resolution of advice and consent February 8, 1900. Ratified by the United States February 14, 1900. Ratified by Mexico April 14, 1900. Ratifications exchanged at Washington May 5, 1900. Proclaimed May 7, 1900.

15. Convention Further Extending Indefinitely the Duration of the Convention of March 1, 1889, signed at Washington November 21, 1900. (Treaty Series No. 244; 31 Statutes at Large, 1936–38.) Original in English and Spanish. Submitted to the Senate December 5, 1900. Resolution of advice and consent December 15, 1900. Rati-

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fied by the United States December 24, 1900. Ratified by Mexico December 12, 1900. Ratifications exchanged at Washington December 24, 1900. Proclaimed December 24, 1900.

16. Convention for the Elimination of the Bancos in the Rio Grande from the Effects of Article 2 of the Convention of November 12, 1884, signed at Washington March 20, 1905, with protocol signed at Washington November 14, 1905. (Treaty Series No. 461; 35 Statutes at Large, 1863–68.) Originals in English and Spanish. Convention submitted to the Senate December 6, 1905. Resolution of advice and consent February 28, 1907. Ratified by the United States March 13, 1907. Ratified by Mexico March 15, 1907. Ratifications exchanged at Washington May 31, 1907. Proclaimed June 5, 1907.

17. Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, signed at Washington May 21, 1906. (Treaty Series No. 455; 34 Statutes at Large, 2953–56.) Original in English and Spanish. Submitted to the Senate May 22, 1906. Resolution of advice and consent June 26, 1906. Ratified by the United States December 26, 1906. Ratified by Mexico January 5, 1907. Ratifications exchanged at Washington January 16, 1907. Proclaimed January 16, 1907.

18. Convention for the Arbitration of the Chamizal Case, signed at Washington June 24, 1910. (Treaty Series No. 555; 36 Statutes at Large, 2481–86.) Original in English and Spanish. Submitted to the Senate June 25, 1910. Resolution of advice and consent December 12, 1910. Ratified by the United States January 23, 1911. Ratified by Mexico December 27, 1910. Ratifications exchanged at Washington January 24, 1911. Proclaimed January 25, 1911.

19. Supplementary Protocol to the Convention of June 24, 1910, signed at Washington December 5, 1910. (Treaty Series No. 556; 36 Statutes at Large, 2487–88.) Original in English and Spanish. Submitted to the Senate December 7, 1910. Resolution of advice and consent December 12, 1910. Ratified by the United States January 23, 1911. Ratified by Mexico December 27, 1910. Ratifications exchanged at Washington January 24, 1911. Proclaimed January 25, 1911.

20. Convention for the Rectification of the Rio Grande (Rio Bravo del Norte) in the El Paso-Juárez Valley, signed at Mexico City February 1, 1933, with annexes, and with exchanges of notes of February 1 and September 8, 1933. (Treaty Series No. 864; 48 Statutes at Large, 1621–66.) Original convention and annexes in English and Spanish. Convention and annexes submitted to the Senate March 10, 1933. (Message of March 1, 1933.) Resolution of advice and consent, with amendment, April 25, 1933 (legislative day, April 17). Ratified by the United States October 20, 1933. Ratified by Mexico October 6, 1933. Ratifications exchanged at Washington November 10, 1933. Proclaimed November 13, 1933.

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ARTICLE 2

The decision in the case of *Rafael Aguirre* v. *United States*, rendered by the Umpire of the Commission under the convention between the United States and Mexico of July 4, 1868 (15 Statutes at Large, 679–85), had the effect of dismissing the Indian depredation claims; these were for damages arising from alleged breach of the obligations of the United States under Article 11 of the Treaty of Guadalupe Hidalgo; the number of such claims presented was 366, amounting to $31,813,053.64⅝ (for the nature of the claims and their adjudication, see Moore, International Arbitrations, II, 1305–9; III, 2430–47).

The opening phrase of Article 2 reads:

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo. . . .	El Gobierno de Mexico por este articulo exime al de los Estados Unidos de las obligaciones del articulo once del Tratado de Guadalupe Hidalgo. . . .

Thus the Spanish version for "releases . . . from all liability on account of the obligations", has "exime . . . de las obligaciones".

In the course of his opinion in the cited case, Sir Edward Thornton thus discussed the question of equivalence of the English and Spanish versions of Article 2 (quoted in *ibid.*, 2446–47):

> It is alleged that the meaning of the Spanish of the first sentence of the 2d article in question is different from that of the English version. The umpire is not of that opinion. The strict translation of the Spanish would be: "The Government of Mexico by this article exempts that of the United States from the obligations of the 11th article of the treaty of Guadalupe Hidalgo." One of the meanings of the word "liable" found in Johnson's Dictionary is "not exempt." The verb "eximir" may be translated "to relieve from nonexemption or liability". In the 3d article of the unratified treaty of 1853, it is stated that "in consideration of the grants received by the United States and the obligations (*obligaciones*) relinquished by the Mexican Republic" the United States agreed to pay a certain sum of money. In the previous article one of the stipulations was that all occasions of dispute on account of reclamations to that date founded on alleged Indian incursions were removed by the abolition of the 11th article of the treaty of Guadalupe Hidalgo. The term "obligaciones" in the beginning of the following article must therefore include those reclamations. There is consequently no reason that they should be excluded from the meaning of the same word in the 2d article of the ratified treaty.
>
> But whether the translation into Spanish was correct or not, it was the Mexican Government alone which was responsible for it. The Spanish version was never submitted to the Senate of the United States, whose sanction to every treaty is necessary. It is true that Mr. Marcy states in his note to Mr. Robles of December 11th, 1856, "that the amendment of the Senate was sent to General Almonte to be translated in advance of the exchange of the ratifications of the treaty." But there is no proof whatever that the translation was sent back to Mr. Marcy, that he was consulted about it, or that he offered any opinion as to its correctness. On the contrary, General Almonte asked on the 4th of May 1854 that the Senate amendments might be sent to him, because he wished to dispatch his mail to Mexico on the following night. On the following day, the 5th, Mr. Marcy forwarded the amendments to General Almonte. There could therefore have been very little time to discuss the correctness of the translation. Nor could there be any object in doing so, for the amendments of the Senate were final, and it was intimated that no modification of them would be admitted by the United States.

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General Almonte was known to be a complete master of the English language. He must have well understood, from his knowledge of the language and of the circumstances preceding the conclusion of the treaty, the real meaning of the English of the sentence in question, and the umpire believes that he correctly rendered it into Spanish.

It seems that the history of the Spanish version [1] of the amended treaty was not fully before Sir Edward Thornton. The statement quoted by him from the note of Secretary of State Marcy of December 11, 1856 (printed in Manning, *op. cit.*, IX, 211–15), is neither complete nor accurate.[2]

The Senate resolution containing the proposed amendments was adopted on April 25, 1854; the amendments were set forth in English only. The communication of those amendments to General Almonte by Secretary of State Marcy on May 5, 1854, was not for the purpose of translation, but was, as remarked in the quoted opinion, in order to enable the Minister of Mexico to send them to his Government by that evening's mail. There was at that time no reason whatever for the making of a translation of the amendments either by or for the Department of State; it was then a grave question, which no one in Washington was in a position to answer, whether Santa Anna would accept the treaty as amended; and if the Mexican Government rejected the proposals framed in the Senate, no occasion for their translation would arise.

There is not even any evidence that General Almonte then or at any time translated the amendments; for his own knowledge and comment he needed no Spanish version of them; he certainly sent their text to his own Government in English; and it is not inherently improbable that there was no accompanying translation.

On May 6, Gadsden being in the United States, the amendments were transmitted by the Secretary of State to the Secretary of Legation at Mexico City, John S. Cripps, in two forms, the amendments as such and a running text of the treaty (English version) as amended.

The despatches of Almonte and the instruction to Cripps reached Mexico City during the latter part of May; the wording (in English) of the amendments as transmitted to Cripps was then compared with that received at the Mexican Foreign Office; and, seemingly, this was done by collating running texts of the English as amended.

The decision of Santa Anna to accept the amended treaty made a Spanish version thereof an essential, for inclusion in the Mexican instrument of ratification; that instrument *might* have embodied the text of the signed treaty in the two languages followed by the amendments in the two languages; a simpler form, and the one used, was to include merely a running text of the amended treaty in Spanish and

[1] Six relevant papers are quoted above under the heading "After the Senate Amendments": note of Almonte to Marcy, May 4, 1854; note of Marcy to Almonte, May 5, 1854; instruction to Cripps, May 6, 1854; note of Gadsden to Bonilla, June 6, 1854; note of Marcy to Almonte, June 20, 1854; note of Almonte to Marcy, June 21, 1854.

[2] Other notes of this period discussing Article 2 are from Robles to Marcy of May 27 and July 31, 1856, and February 21, 1857, and from Marcy to Robles of July 9, 1856 (see Manning, *op. cit.*, IX, 834–35, 839–45, 898–901, 206–8).

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English; and since Washington was the place fixed for the exchange of ratifications, a special messenger left with the papers for delivery to Almonte, who received them by June 20, and probably a day or so earlier.

On the morning of June 20 Almonte left at the Department of State copies of the English and Spanish versions of the amended treaty; there is no reason to think that any Spanish translation of the amendments was available to the Department of State before this; the English version was examined; "a few verbal inaccuracies" therein were "noted in pencil", and the papers were returned on the same day to Almonte with the request that he make any necessary corresponding alteration in the Spanish and again deliver the papers to the Department as soon as convenient; with a note of Almonte of the next day, June 21, the papers were so delivered in order that their contents might be written into the United States instrument of ratification; and Almonte asked that his copies be sent back to him when this had been done.

So from June 21, eight days before the ratification of the United States and nine days before the exchange, the Spanish version was in the Department of State; it would be unreasonable not to suppose that it was then carefully scrutinized; and if so, one may well believe that the same conclusion regarding the Spanish of Article 2 was arrived at as that stated by Sir Edward Thornton in the first of the three quoted paragraphs of his opinion.

Certainly there is persuasive evidence that the Spanish of the Mexican instrument of ratification was gone over with some care at the Department of State before the exchange. As written at Mexico City the words of Article 1 "de latitud norte: de alli siguiendo dicha paralela de 31°20′ " were omitted from that instrument;[1] the proper correction, made by overwriting and interlineation, shows very plainly on the manuscript; and just opposite, in the English of the right column, the phrase "thence along the said parallel of 31°20′ " is within a penciled parenthesis, which was doubtless made prior to the correction and in order to call attention to the need of it.

Article 3

By Article 3 the Government of the United States agreed to pay to the Government of Mexico, in the city of New York, the sum of $10,000,000; of this, $7,000,000 was to be paid upon the exchange of ratifications and the remaining $3,000,000 "as soon as the boundary line shall be surveyed, marked, and established".

The necessary appropriation act became law on June 29, 1854, providing (10 Statutes at Large, 301):

> That the sum of ten millions of dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to enable the President of the United States to fulfil the stipulation in the third article of the treaty between the United States and the Mexican Republic, of the thirtieth

[1] Omission of a phrase preceding a repeated word (or as here, figures) is a common scrivening error.

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of December, one thousand eight hundred and fifty-three, as subsequently amended by the Senate of the United States; of which said sum of ten millions of dollars, seven millions are to be paid on the exchange of the ratifications of said treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.

The payment of $7,000,000 was "a simultaneous act with" the exchange of ratifications on June 30, 1854 (Marcy to Almonte, February 7, 1855; Manning, *op. cit.*, IX, 178–79).

The balance of $3,000,000 was, by the treaty, to become due upon the surveying, marking, and establishing of the line [1] by the Commissioners of the two Governments, Major William H. Emory for the United States and José Salazar Ilarregui for Mexico, pursuant to Article 1; necessarily, this could not mean literally "as soon as" the line was so established, but when the fact was officially known at Washington.[2]

On August 16, 1855, the Boundary Commissioners agreed upon four articles, which have been quoted above from Emory Report, 32–33 (also printed in Senate Executive Document No. 57, 34th Congress, 1st session, serial 821, pp. 59–60; hereinafter cited as "serial 821").

On October 15, 1855, the notification mentioned in the third of those articles was delivered at Janos (in northwestern Chihuahua) to Commissioner Salazar by Lieutenant Michler; on the same day the Mexican Commissioner wrote a formal acknowledgment thereof to Commissioner Emory and also officially communicated the fact to the Mexican Minister of Foreign Affairs; and Major Emory, at Washington, on December 18, 1855, communicated to the Secretary of the Interior, Robert McClelland, the letter of Salazar of October 15 (*ibid.*, 61, 64–65; Emory Report, 35–36). With his note of December 10, 1855 (printed below), received December 11, the Mexican Minister at Washington, General Almonte, transmitted to Secretary of State Marcy a copy of a communication of November 19, 1855, received from the Mexican Minister of Foreign Affairs, Miguel M. Arrioja; its purport was that the Mexican Commissioner, Salazar, had informed his Government under date of October 31 that the work of demarcation had, with the assent of the American Commissioner, been ended, that the new boundary line was consequently established, that the President ad interim of Mexico considered that the conditions precedent to the payment of the $3,000,000 had been fulfilled, and that Almonte was authorized by the communication to receive the fund (D.S., 8 Notes from the Mexican Legation).

[1] Meaning so much of the boundary as had not been surveyed and established under the Treaty of Guadalupe Hidalgo.

[2] During correspondence evoked by the occupation of Mesilla Valley by forces of the United States from November 15 (or 16), 1854, to February 8, 1855, it was suggested by the Mexican Minister that possession of the territory gave to Mexico "right to demand payment" of the $3,000,000 (Almonte to Marcy, February 15, 1855; Manning, *op. cit.*, IX, 747–49; for other notes of Almonte on the subject, of January 29, April 7, May 10, and May 17, 1855, see *ibid.*, 742–43, 754, 764–65, 770–71; and for responses of Marcy of February 7, May 14, and May 22, 1855, *ibid.*, 178–79, 182–86, 187–89).

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In an opinion of October 29, 1855, Attorney General Caleb Cushing advised that by the agreement of the Commissioners on August 16, 1855, the line was "established", subject only to the postponement involved until receipt of the notification of Article 3 of that agreement, and that the "completion of calculations or preparation of plans" was not in "any way material" (7 Opinions of the Attorneys General, 582–94; serial 821, pp. 21–29); [1] in accord with that opinion, the following proclamation of June 2, 1856, "Respecting the Boundary with Mexico" (11 Statutes at Large, 793–94), was prior in date to the signing of any of the boundary maps; but under the Attorney General's opinion such a proclamation might have issued as early as December 18, 1855:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS pursuant to the first article of the treaty between the United States and the Mexican Republic, of the thirtieth day of December, one thousand eight hundred and fifty-three, the true limits between the territories of the contracting parties were declared to be as follows:

> "Retaining the same dividing line between the two Californias as already defined and established, according to the fifth article of the treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows:
> "Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31°47′ north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31°20′ north latitude; thence along the said parallel of 31°20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado rivers; thence up the middle of the said River Colorado until it intersects the present line between the United States and Mexico:"

And whereas, the said dividing line has been surveyed, marked out, and established, by the respective commissioners of the contracting parties, pursuant to the same article of the said treaty:

Now, therefore, be it known, that I, FRANKLIN PIERCE, President of the United States of America, do hereby declare to all whom it may concern, that the line aforesaid shall be held and considered as the boundary between the United States and the Mexican Republic, and shall be respected as such by the United States and the citizens thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, this second day of
[L.S.] June, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States the eightieth.

FRANKLIN PIERCE.

BY THE PRESIDENT:
W. L. MARCY, *Secretary of State.*

In the meantime the Government of Mexico had sought to anticipate the payment; by three notes of the Mexican Minister at Wash-

[1] Major Emory thought that Article 1 of the treaty "will not have been fulfilled until the final completion and signature of the plans by both commissioners" (see serial 821, pp. 61–62).

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ington, dated January 19, March 24, and August 18, 1855 (D.S., 8 Notes from the Mexican Legation), notice was given of drafts drawn by the Government of Mexico "on account of the three millions of dollars" payable pursuant to Article 3; this is a list of those drafts:

No.	Date	Amount	Payee [1]
149	December 19, 1854	$500,000	Howland & Aspinwall
150	December 19, 1854	500,000	Howland & Aspinwall
151	December 19, 1854	500,000	Howland & Aspinwall
152	February 23, 1855	375,000	Hargous & Company
153	February 23, 1855	375,000	Hargous & Company
154	July 18, 1855	556,000	Howland & Aspinwall
155	July 18, 1855	[2] 100,000	Howland & Aspinwall

[1] The two drafts of July 18, 1855, were to the order of representatives of Howland & Aspinwall and endorsed over.

[2] This draft of $100,000 seems to have had its origin in a suggestion of Major Emory for an advance of that amount by the United States in order to put the Mexican Commissioner in funds to carry on the work of demarcation; that suggestion was looked on with favor by Marcy and was communicated to Almonte (D.S., 7 Notes to the Mexican Legation, 21–22, March 20, 1855); the first answer of Almonte was that no advance was required (D.S., 8 Notes from the Mexican Legation, June 4, 1855); but later he wrote from New York that it would be received and that a draft for the amount would be presented by Howland & Aspinwall (*ibid.*, August 2, 1855); to this Hunter, Acting Secretary of State, replied that the President deemed it preferable to make the advance through Major Emory (D.S., 7 Notes to the Mexican Legation, 43–44, August 7, 1855); with this, the question of such an advance ended (the two cited notes of Marcy and the later of the two notes of Almonte are in Manning, *op. cit.*, IX, 182, 190–91, 780–81; all the relevant papers are in serial 821, pp. 6–11, 13–14, 16–18).

The total face value of the drafts was thus $2,906,000.

The three mentioned notes of Almonte were in rather similar terms; that of January 19, 1855, is as follows (translation; the note of March 24 gave notice of drafts for $750,000, and that of August 18 of drafts for $656,000):

> The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has the honor to inform the Honorable W. L. Marcy, Secretary of State of the United States of America, that his Government has issued three drafts upon the Treasury of the United States, of five hundred thousand dollars each, under date of the 19th of last month, in favor of Messrs. Howland & Aspinwall, merchants of New York, to be paid when due according to the terms stipulated in the treaty concluded on the 30th of December 1853 between the Mexican Republic and the United States of America.
>
> The undersigned, by order of his Government, has the honor of communicating to the Government of the United States the arrangement alluded to, and avails himself. . . .

The three Mexican notes were acknowledged by Marcy respectively on January 22, March 26, and August 21, 1855 (D.S., 7 Notes to the Mexican Legation, 13–14, 22–23, 47–48), with the statement that he had "transmitted a copy of General Almonte's note to the Secretary of the Treasury for his information" or that he had "informed the Secretary of the Treasury of this transaction"; and translations of the

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notes of Almonte were concurrently sent to the Secretary of the Treasury, James Guthrie (see serial 821, pp. 3–4, 12–13, 18–19).

The drafts for $2,906,000 were negotiated during the regime of Santa Anna, and it was reported that they were disposed of at great discount. The British Chargé d'Affaires at Mexico City, William Garrow Lettsom, wrote that one draft of $650,000 (presumably the two drafts of July 18, 1855, for $656,000) was sold for $250,000 (Garber, 156, citing a despatch of August 2, 1855); and Gadsden, in his lengthy private despatch of June 5, 1855, gave this information and warning to Marcy in advance of the fall of Santa Anna (D.S., 19 Despatches, Mexico; not printed in Manning):

> One of the First acts on restoration will be to declare Santa Anna, and his Ministerial Advisers: and stimulators to his abominations Traitors: who have forfeited their Heads to the Republic— Their administration for Two Years during their Military encampment in Mexico will be nullified: and which may possibly even involve the Treaty now in process of execution: if you anticipate the Payment of the Three Millions: or have committed the Government to the Payment of the drafts for Some 2,500000 Dollars: most of which is plunder of this Country— Some of those drafts were purchased at 50 per ct & others at not less than 30. when they ought to have commanded a premium— The average plunder is therefore on that amount is between 900000 and One Million. while the residue 1,500000 has passed into the hands of Contractors: out of which the Nation & People have been swindled of ful 500,000— The Federalists, as officially as they can under their present organization, have notified me: that they protest against the sale of any more domain by Santa Anna: and that they will claim the Three Millions if they get into power before the line is run and marked— The drafts of Santa Anna cannot and ought not to be recognized in advance of the maturity of the Installment— Let them come back protested: On the Drawer: and put your Veto on the 3 millions, either as a reprisal for the indemnity of our own claims: or for the Exiled Government: which Santa Anna would tax for his wrongs— They cannot & will not recognize them as responsibilities on them— They were not parties to the robbery: and let those suffer who joined in the plunder—

A more detailed and circumstantial account of the $650,000 transaction is in Gadsden's unofficial despatch dated July 11, 1855 (continued on various dates to July 17), from which these passages are excerpted (D.S., 19 Despatches, Mexico; not printed in Manning):

> The *Bankers* have committed themselves with Santa Anna: in plundering, in *anticipation*, the Treasury of Mexico of the Three Millions of Dollars; not yet due on the last territorial purchase: and the tribute [1] to the *stability* and *wisdom* of Santa Anna's government: was to justify the Administration for the respect which, it is said has been paid to the drafts presented through the influence of an American House (interested) and those which are to follow, absorbing the last amount— This 650.000 dollars was not negotiated for untill assurances came from the US. that there would be every security in [illegible] arrangement: and this effected: at the moment that the refusal to recognize [any?] drafts: or even note them for payment: I was using with some effect in bringing the issues with this Rule to a happy termination— Every lever that I could apply: has been wrested from my hands by these vigilant or Cormorant Bankers: and mortifyingly so in this last instance as it has been through the agency of American Bankers: who have united in Bonilla's Deplomacy; that my Ministerial bearing & course is personal: not approved of by the President; that I have not his

[1] The reference is to a letter of an American citizen, published at Mexico City, and previously characterized by Gadsden as "written for Wall Street".

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Confidence, and that all my recommendations are disregarded— . . . But American Bankers interested in the *fraud* on this Country, as well as on that, I have the honor to represent; and the will to protect her interests; have had the influence to assure Santa Anna that his drafts on the Three Millions will be respected—when by the Treaty, the sum may be at the disposal of the Legitimate Government of Mexico; or justly a subject of *reprisal* for the wrongs inflicted by Santa Anna on Citizens of the U States— Is the Government of the U States to be out deplomatized, and by *its own Bankers;* who have permitted whisperings in this City, that the Representatives of the American Federation, are as approachable as Santa Anna; and his Ministers; and that the American Envoy's *personalities* are well understood in the US to be the obstacles to the harmonious adjustment of all the insults and wrongs of Santa Anna and his deluded Minister— I feel satisfied not— . . .

That you may understand the process by which these frauds are practised: & Santa Anna & Ministers participate, so that in the Books of the Treasury the Transactions may look legitimate you here have a statement of the last negotiation with the 650,000 supposed to be to the Credit of Santa Anna in Washington— The Bankers agree to advance in Cash to Santa Anna 200,000 & pay 450,000 in securities (3 per ct) of the interior funded Debt— The acct in the Treasury looks fair and balanced on the Books— Thus—

By Amt from US.		650.000
To this ampt Paid in by NB & C^{a}	200.000	
To redemption of Public securities	450.000	650 000

The Securities are now hawked about in this market at $5—on the Par 100— with two years interest $6 due on them The Bankers thus defraud the Treasury of 430,000 dollars which is devided among the Negotiators— If this is not history: the Bankers themselves deceive me: and You may recollect in my early despatches that I had adverted to this fact as among the embarrassments of my early negotiations— The Bankers seeking their agency in negotiations as the only means of accomplishing any thing: as Santa Anna had to be approached in a mode that a minister could not— That it was their vocation, and that no Governmental negotiation was ever Consummated, without the intervention of a Palace Broker— It is pressed upon me daly—

Santa Anna left Mexico City on August 9, 1855, for Veracruz (see circular and decree of August 8, 1855, in Dublan y Lozano, Legislacion mexicana, VII, 552–53); at Perote on August 12 he signed a manifesto wherein he announced his abdication; and on August 14 General Martín Carrera was declared Provisional President. On August 12 General Juan Álvarez, leader of the revolutionary movement, wrote from Acapulco to Gadsden asking that the President of the United States "may prevent the delivery of the said three millions to the present administration of Mexico", meaning that of Santa Anna (D.S., 19 Despatches, Mexico, No. 71, September 18, 1855, enclosure; the despatch is endorsed as received on October 2; Manning, *op. cit.*, IX, 785–88). The same question arose that Secretary of State Clayton had envisaged as possible in respect of the payments under the Treaty of Guadalupe Hidalgo when he wrote thus on September 18, 1849 (quoted in vol. 5, pp. 400–404):

> According to the article as it now stands, the instalments, with the accruing interest, are to be paid to the Mexican government, in Mexican coin at the City of Mexico. If the administration of President Herrera should be overthrown by one of those revolutions to which Mexico has heretofore been so liable, the government de facto at the date when any one of the instalments falls due, will now have a right to expect payment thereof.

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Following the brief provisional presidency of General Martín Carrera (from August 14 to September 12) and the holding of the executive power for a short interval by General Rómulo Díaz de la Vega, Álvarez was elected President ad interim, organized his government on October 6, and entered Mexico City on November 15. This note was written by Almonte to Marcy on November 3, 1855 (D.S., 8 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has the honor to communicate to the Honorable W. L. Marcy, Secretary of State, that he has been ordered by his Government to inform the Government of the United States of America that, owing to the careful examination to which the contracts and negotiation of the remaining three millions due to Mexico from the American Government in accordance with the Mesilla Treaty must be subjected, the present Mexican Government has resolved that the drafts drawn by the administration of General Santa Anna on the above-mentioned three millions and against the Treasury of the United States of America, are void and of no effect, and that consequently the undersigned is to receive the said three millions, in conformity with the third article of the treaty signed at Mexico City on the 30th of December 1853.

The undersigned hopes, from the good friendship and good understanding which happily exist between the United States and the Mexican Republic, that the American Government will find no difficulty in complying with the wishes of the Mexican Government, and begs the Secretary of State to lay this note before His Excellency the President and to transmit to him as soon as possible his decision.

Attorney General Caleb Cushing now gave to the Secretary of the Treasury an opinion, dated November 25, 1855, on "the duty of the United States in the premises"; after setting forth the facts, he wrote (7 Opinions of the Attorneys General, 599–601; serial 821, pp. 30–31):

I think the question thus presented is a political rather than a legal one; the more, that the holders of the drafts thus repudiated by the existing administration of the Mexican Republic, are citizens of the United States. It having such paramount political or diplomatic relations, it would be inconvenient, it seems to me, to undertake to decide the matter on the premises of a mere question of law between man and man; and proper that it should be determined as an executive or administrative question, either by yourself, or, in the first instance, by the Secretary of State, by reason of its international character and diplomatic relation to the Mexican Republic.

Marcy's answer of November 29, 1855, to Almonte reads as if some compromise arrangement with the bankers was in mind; his note, after acknowledgment of that of Almonte, contained these paragraphs (D.S., 7 Notes to the Mexican Legation, 53–55; in full in Manning, *op. cit.*, IX, 194–95):

In compliance with the request contained in General Almonte's note, it was laid before the President and has received that careful consideration which the importance of its subject required.

The Undersigned has the honor now to acquaint General Almonte, by direction of the President, that, as the drafts referred to appear to be regular, and as General Almonte in notes dated, respectively, the 19th. January, 24th. March, and 18th. August last, gave official notice of them to this Government, and stated that they were to be paid to the holders upon the fulfilment of the condition prescribed in the Convention of the 30th. December 1853; and, finally, as the event which will require payment of the three millions due under that Convention referred to, is likely soon to occur, the Government of the United States will feel

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bound to pay the amount of these drafts to the present holders;—notwithstanding the mere announcement of the existence of objections on the part of the Mexican Government, unless those objections shall be fully stated and should appear valid and conclusive to this Government.

The President desires to take such a course in this matter as will be agreeable to the Mexican Government, provided it be not prejudicial to the legal or equitable rights which the holders of the drafts have acquired. If General Almonte has authority from his Government to make an amicable arrangement of this matter, the Undersigned wishes to confer with him for that purpose.

Almonte had no authority "to make an amicable arrangement of this matter"; he wrote on December 1, 1855 (D.S., 8 Notes from the Mexican Legation, translation; in full in Manning, *op. cit.*, IX, 802–3):

The undersigned, before replying to the contents of the note of the Secretary of State, desires to know whether the drafts referred to were accepted at their due time by the Honorable Secretary of the Treasury, and at what date. As it is important for the undersigned to ascertain this fact, in order to enter into the explanations desired by the Honorable Secretary of State, he trusts that it will be furnished to him as speedily as possible.

Marcy dealt with the question of acceptance of the drafts in this paragraph of his note of December 5 (D.S., 7 Notes to the Mexican Legation, 55–56; in full in Manning, *op. cit.*, IX, 195):

In reply, the Undersigned has the honor to acquaint General Almonte, that the same course was adopted with reference to those drafts, which is always pursued, by every Department of this Government, with regard to drafts not payable at sight. They were not accepted, and solely because it is not the practice of the Government to accept any drafts. When, however, money is due, by the United States, to any party, the draft of that party for the money, is paid when no sufficient cause appears for withholding payment on presentation, even if dated in advance of the period when the money may become due. Under these circumstances, it is not perceived what effect the omission to accept the drafts in question can or should have upon their payment, supposing the period to have arrived when the payment could with propriety be made.

Almonte now set forth the Mexican position in this reasoned note of December 10 (D.S., 8 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has had the honor to receive the note which the Honorable W. L. Marcy, Secretary of State, addressed to him on the 5th instant, in reply to his of the 1st of the same month, in which the undersigned requested the Secretary of State to be pleased to inform him whether the Government of the United States had accepted the drafts that the Mexican Government had drawn upon the Treasury of said United States on account of the three millions that are yet due to Mexico in fulfilment of the Treaty of the Mesilla.

In view of the reply of the Secretary of State, in which he states positively that said drafts have not been accepted (whatever may be the cause), and in consideration of the fact that the undersigned, by order of his Government, gave timely notice to the Government of the United States of its decision that the aforesaid drafts should be annulled, without possibility of any question being raised as to its right to do so (in the same manner that any merchant or individual may cause payment of a draft to be suspended when it may agree with his interests to do so), the undersigned hopes that, the boundary line between the United States and the Mexican Republic having now been marked and settled, as appears from the accompanying copy of a communication,[1] which under date

[1] Cited and summarized above.

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of the 19th of last month he has received from his Government, by which the Secretary of State will also see that the undersigned has been empowered to receive the three millions above mentioned, the Government of the United States will proceed, without any further delay, to deliver to him the aforesaid sum, in compliance with the third article of the treaty of the 30th of December 1853.

The undersigned might here bring this note to a close, because, in order to establish his Government's right to be paid, it is sufficient for him to know that the drafts in question have not been accepted by the Government of the United States. But in order that the Secretary of State may see that there are yet other reasons which militate against his assertion that the acceptance of the drafts is not necessary, the undersigned will dwell a little more upon this subject, bringing forward the following considerations.

The practice of not accepting drafts, which the Secretary of State asserts is observed by the Treasury Department, may well be proper so far as its subordinates or other private individuals are concerned, but not with regard to a Government with which positive and binding obligations have been contracted and which is treated on terms of equality. How would it be if, the drafts not having been accepted, they should be presented when due for payment, and the Government of the United States should refuse to pay them? Would there be any reason for exacting payment of the same? Certainly not. The holders of the drafts, actuated, no doubt, by this just fear, have not ceased to exert themselves in order to obtain their acceptance, since the simple presentation of the same to the Secretary of the Treasury did not afford them the security they desired. If what the Secretary of State says were exact, relative to its not being necessary, or what is the same, that it is not customary, for the Secretary of the Treasury to accept drafts, giving to understand that their presentation is sufficient for their being considered as good, the undersigned asks again, would the holders of the aforesaid drafts have exhibited so much anxiety and alarm? Certainly not. If this practice has been so invariably followed, why did the Secretary of State delay nearly the whole of the preceding month in replying to the note of the undersigned of the 3d of last month and in making known to him a practice so common, a thing so simple?

The undersigned would also recall to mind that, when he asked for the three millions in consequence of General Garland having forcibly occupied the Mesilla without waiting for the termination of the labors of the Boundary Commissions, Mr. Marcy, in his reply to the undersigned under date of the 15th [*14th*] of last May,[1] in refusing the payment of said three millions, did not even make any allusion to the obligation which he now says his Government considers itself to be under, to pay the drafts in question, it so happening that at least two of them, one in favor of the house of Mr. Aspinwall and the other in favor of the house of Hargous, had been presented in the preceding months of January and March, and the amount of which is nothing less than two million two hundred and fifty thousand dollars ($2,250,000).[2] Accordingly, if the practice that the Honorable Secretary of State mentions had been so constantly followed, it certainly could not have escaped his penetration at the time to which the undersigned refers, and it would have been applied to these drafts, which are the same as those of that period, and in this manner the wishes of the Mexican Government would have been satisfied then and the just resentment which the improper occupation of the Mesilla caused it to feel would to a certain degree have been conciliated.

But the Secretary of State says that the Government of the United States may sometimes find itself obliged not to pay drafts that are presented to it, when there are objections which it considers valid. The undersigned thinks that there can be no greater objection nor impropriety to pay these drafts, which have not been accepted, than the fact that the utterer or drawer of said drafts himself has said, in due and proper time, that they were without effect. This is precisely what the Government of the undersigned has done, which Government is the legitimate owner of the money in question, of which the Government of the United States cannot dispose without attacking the just rights of Mexico.

[1] This correspondence has been cited above.

[2] These were the first five of the seven drafts above listed.

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With regard to the causes which the Mexican Government may have for directing that the aforesaid drafts be without effect, the undersigned cannot persuade himself that the Honorable Secretary of State seriously asks that these causes should be explained to his Government, for it is clear that such pretension would tend to attack the sovereignty of the Mexican nation, which is free and independent and therefore has no account to give to anyone of its domestic administration. Should there be any persons who consider themselves aggrieved, or who have any complaint against the Government of the undersigned, they are at full liberty to state these complaints before the said Government, or before the tribunals of the Republic, where the same will be heard and taken into consideration; but to claim that the Mexican Government should submit its acts to the approval of the Government of the United States seems to the undersigned to be a pretension so inconsiderate and so foreign to the good understanding which happily exists between the two nations that he cannot comprehend how it could have found a place in the councils of the American Government.

Under these circumstances the undersigned hopes, from the impartiality no less than from the consideration which is due to a friendly nation, that the Government of the United States will not insist on paying drafts which, although previously drawn by the Mexican Government, have subsequently been declared invalid by the same Government, this having been done before the time within which said drafts ought to have been paid. But if, notwithstanding this declaration, the American Government should insist in making said payments, the undersigned hereby protests, in the name of his Government, for that contingency, in the most solemn manner, against such step; and he likewise declares that his Government will have a right to claim, at any time, the three million dollars which, in virtue of the third article of the treaty of the 30th of December 1853, the American Government was pledged to pay to it as soon as the boundary line was established, besides losses and damages.

The undersigned entreats the Honorable W. L. Marcy to be pleased to acknowledge the receipt of this note, and on this occasion has the honor. . . .

In his next note, of January 8, 1856, which follows, Marcy confessed "the very great embarrassment" of this Government and refrained from arguing the question of right (D.S., 7 Notes to the Mexican Legation, 57–59):

The Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of General Almonte, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, of the 10th. ultimo, in relation to the payment of its drafts on the Treasury of the United States drawn by Mexico on account of the three millions of dollars due, and to be paid, pursuant to the Convention of the 30th Decr 1853.

In reply, the Undersigned has the honor to acquaint General Almonte, that, as the drafts referred to are nearly all in favor of citizens of the United States,[1] and as this Government has been formally and officially requested by the Mexican Government itself to pay them, very serious embarrassments are thereby presented in the way of making a different disposition of the three millions from that before directed by Mexico. General Almonte's protest against the payment of the drafts is not founded on any objection to their validity, nor is it denied that the Mexican Government had made direct application to the Government of the United States to apply the money, when payable, to these drafts.

Under these circumstances, General Almonte cannot but be sensible of the very great embarrassment in which this Government is placed by that of Mexico.

Were the transaction between individuals, there could be no question as to the course which equity and justice would require. By the drafts, the fund on which they were drawn would be considered as appropriated to the bona fide holders of them, and the payment to the owner of the fund, after that owner had requested the Depositary to apply it to the drafts, would not exonerate the Depositary from liability to pay the drafts.

[1] Since two concerns held all the drafts, this must mean that nearly all the financial interest in them was American owned.

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With a decided disposition to conform to the wishes of Mexico in the transaction, in case it can be done in good faith to the holders of the drafts,—this Government must ask that of Mexico to remove the difficulty which it has created by causing the claim of the holders of the drafts to be withdrawn. As soon as this is done, or Mexico will show that the drafts are invalid, or for any good reason ought not to be paid, the United States will most readily comply with General Almonte's request to pay the $3,000,000 to him, as the authorized agent of the Mexican Republic, when the contingency on which payment depended shall have happened. As Mexico has created the embarrassment which prevents this Government from complying with the request of General Almonte, she will perceive the reasonableness of the expectation of this Government that she should remove it.

The diplomatic discussion ended with this note of Almonte of January 21, 1856 (D.S., 8 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has had the honor to receive the note which the Honorable W. L. Marcy, Secretary of State, was pleased to address to him on the 8th instant in reply to that which he addressed to him on the 10th of last month relative to the payment of the three millions still due to Mexico according to the Treaty of the Mesilla.

As the Honorable Mr. Marcy has taken no notice of the reasons that the undersigned had the honor of submitting to him in his aforesaid note of the 10th of last month, in virtue of which the Mexican Government had thought proper to alter its determination in regard to the payment of the drafts that it had previously drawn on the said three millions (which drafts were not accepted, according to the statement of the said Secretary of State), the undersigned finds himself under the necessity of repeating now all that he had the honor of stating to the Secretary of State in the aforesaid note, adding that the American Government has no right to pay to any person the money which, by the treaty of the 30th of December 1853, it must deliver to the Mexican Government only.

The undersigned, nevertheless, in deference to the wishes of the Government of the Honorable Secretary of State, will this very day transmit to the Government of Mexico a copy of the note of Mr. Marcy, in order that it may determine in due time what it may deem proper, and on this occasion has the honor. . . .

On dates which were approximately concurrent with the notes of the Mexican Minister of January 19, March 24, and August 18, 1855, the two banking firms had formally notified both the Secretary of State and the Secretary of the Treasury of their holdings of the drafts and of their claims thereunder (see serial 821, pp. 4–6, 15–16, 19–21, 66–73); after objection made by the Mexican Government (note of November 3, 1855, printed above) to payment of the drafts, there were naturally further communications from the bankers, though (*semble*) none to them in writing; and the papers submitted by the bankers were very regular on their face; they included receipts from the Mexican Treasury for the face amounts of the drafts, and, in respect of the Howland & Aspinwall drafts for $1,500,000, a report by the Secretary of the Treasury of Mexico that the contract was for a discount of 5 percent (*ibid.*, 37–47, 49–50, 72).

By note of February 5, 1856, Almonte, by order of the Mexican Government, requested payment of the Hargous drafts for $750,000 and the two later Howland & Aspinwall drafts for $656,000, in all, $1,406,000; and by note of March 19, 1856, the Mexican Chargé d'Affaires ad interim, Angel de Iturbide, similarly requested payment

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of the Howland & Aspinwall drafts for $1,500,000, and also that "the whole remainder of the aforesaid three millions" ($94,000) be paid to that firm (D.S., 8 Notes from the Mexican Legation; the note of March 19 is in Manning, *op. cit.*, IX, 825–26); to this last note Marcy answered the next day that payment of the drafts in question had been directed but that it was "deemed advisable to postpone the payment of the balance of the amount which will then be due to Mexico until after a draft or drafts therefor in the usual form shall have been presented to this government" (D.S., 7 Notes to the Mexican Legation, 68; Manning, *op. cit.*, IX, 202–3). Pursuant to those requests, directions for payment at the Treasury were given by Marcy; the drafts for $656,000 were paid on February 7; those for $750,000 on February 9; and those for $1,500,000 on March 20; the balance of $94,000 was paid to Howland & Aspinwall on April 4, 1856, the requirement of a draft for that amount having been waived (see serial 821, pp. 50–53, 74–76).

Obviously, the story of the drafts is told only in part in the papers sent to the Senate with the presidential message of April 14, 1856, in response to a requesting resolution of the previous March 20 (serial 821); the diplomatic correspondence is among the papers transmitted; but the despatches of Gadsden concerning the drafts were not at any time communicated to either House of Congress.

There can be little doubt that the withdrawal of the Mexican objections to payment of the drafts was the result of arrangements between the Mexican Government and the bankers. Gadsden wrote on December 5, 1855, that the bankers had "agreed to compromise on some 5 or 600,000 Dollars with the Government for the recognition" (Manning, *op. cit.*, IX, 806; see also *ibid.*, 814, December 19, 1855). It seems likely that this compromise was only in respect of the four drafts for $1,406,000; for as late as January 23, 1856, Howland & Aspinwall wrote to Marcy asking payment of their drafts for $1,500,000, stating that the Government of Mexico had "been endeavoring to extort from our Agents in the City of Mexico, a large sum of money as the price for withdrawing the protest", and adding their belief "that our own Government will not, by longer withholding what is justly due, force such an alternative upon us" (D.S., Miscellaneous Letters, January 1855, misfiled; printed in serial 821, pp. 49–50). It is relevant in this connection to observe that the official request of Mexico for the payment of the Howland & Aspinwall drafts for $1,500,000 was not made until some six weeks after the similar request in respect of the other drafts.

Gadsden denounced the transaction of the drafts in unmeasured terms; he called it "one of the greatest frauds, which history has ever recorded" (Manning, *op. cit.*, IX, 805, December 5, 1855; and see his remark to the British Chargé d'Affaires at Mexico City, quoted in Garber, 173). Gadsden's first opinion was that the $3,000,000 should be paid to the Government of Álvarez[1] (Manning, *op. cit.*, IX, 788, September 18, 1855); and he continued to regard this as a proper policy (*ibid.*, 799, November 25, 1855; 805, December 5, 1855;

[1] Ignacio Comonfort became Substitute President on December 8, 1855.

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819, January 18, 1856). At the same time, however, he suggested that payment be withheld because of the Mexican contention that the Indian depredation claims under Article 11 of the Treaty of Guadalupe Hidalgo were not extinguished by Article 2 of the Gadsden Treaty (*ibid.*, 806, December 5, 1855).

On the subject of the drafts nothing was written to Gadsden by Marcy until this instruction of February 4, 1856, one day before the request of the Government of Mexico for the payment of drafts for $1,406,000 (D.S., 17 Instructions, Mexico, 64–68):

As early as December 1854 the Mexican government raised money mostly from American citizens, pledging for the repayment thereof the remaining $3,000,000, which would be payable to it by the United States, under the Treaty of the 30th of December, 1853, when the boundary line referred to in that Treaty should be established. For the money thus advanced the Mexican government drew drafts on this Government, and gave notice through its Minister here, that the drafts were drawn on that fund, and requested them to be paid out of it. When the time approached for the payment of the $3,000,000, this Government was surprised by a notice from General Almonte, the Mexican Minister here, that his Government countermanded the payment of the drafts and demanded that the $3,000,000 should be paid directly to itself. The Mexican government, though called on for that purpose, has not shown any reason—or scarcely a pretext for such a change of purpose. The validity of the drafts has not been questioned; that they were drawn on the fund in possession of the United States is not denied; and that this Government had been requested by that of Mexico to pay these drafts when the $3,000,000 should become payable, is not controverted. Had this been a transaction between private persons, I can hardly conceive how there could have been a difference of opinion as to the proper course to be pursued by the holder of the fund. The drafts would have been considered as an equitable appropriation of that fund to the amount of them in the hands of the fund-holder.

The Government of Mexico had a perfect right to raise money on this fund by pledging it, and it is quite common for Governments to anticipate their revenue or income by loans in that way. I herewith send you a copy of the correspondence between this Government and the Mexican Minister—General Almonte, by which you will see the views of both parties on the subject.

After having raised money from our citizens to a large amount on the pledge of the $3,000,000, it is difficult to see how Mexico can justify her attempt to withdraw the fund thus pledged from the holders of the drafts, or how the United States can give effect to this attempt without being a party to an injury to their own Citizens. I indulge the hope that if this case is strongly put to the Mexican government, it will see the propriety of withdrawing the objection to the payments of the drafts which it has requested this Government to pay.

The President directs you to bring this matter before the Government of Mexico, and if not able to induce it to withdraw the protest against the payment of the drafts, you are instructed to ask it to furnish the reasons which, in its judgment, justify the protests against the payment of them. You will perceive, as no doubt the Mexican Government will, the propriety of the request of this Government to be furnished with these reasons. As the case now stands, it is obvious that the Mexican Government by raising money on the pledge of the $3,000,000, giving the lenders drafts on that sum in possession of the United States, and requesting them to pay the drafts, has created duties on the part of the United States towards the holders of those drafts. If there be substantial reasons for the protest, it is important that these reasons should be known to the United States that they may offer them in opposition to the claims of the holders of the drafts to be paid by the United States. What would justify Mexico in protesting against the payment of the drafts would be an answer to the demand on the United States to pay them. If she cannot justify the protest, the United States would find it exceedingly difficult to dispose of the claims to the holders of the drafts—Mexico having requested the drafts to be paid out of the $3,000,000. Mexico having created the embarrassments in which this government is placed

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will, undoubtedly, feel herself bound to remove them. This Government is desirous to conform in this matter to the wishes of Mexico, and will do so as soon as Mexico has removed the obstacle which she herself has created.

Your despatches to Nº 82, inclusive, are received.

Regarding the foregoing instruction it is to be said that if there was a "pledge" of the fund or an "equitable appropriation" thereof, it was surely relevant to ascertain the actual amount of the advances made by the payees of the drafts, the pledgees; no such inquiry was suggested, despite what Gadsden had written in his private despatch of the previous June 5 (quoted in part above); it is indeed very strange that Marcy makes no mention whatever of Gadsden's communications. Moreover, the "perfect right" of the Government of Mexico to anticipate the fund was, at least, doubtful; it may well be argued that the wording of Article 4, which was written in the Senate, was deliberately chosen and intended to exclude the privilege of assignment or anticipation. Only six years earlier the Senate had changed the wording of Article 12 of the Treaty of Guadalupe Hidalgo so as to make non-negotiable, instead of negotiable, the obligation of the United States for the instalment payments to be made under that instrument (see vol. 5, pp. 243–44; and for the dissimilar views of Buchanan and Clayton on the question of anticipation, 256, 384, 402–3); and, realistically, if the right of the Government of Mexico to assign or pledge the fund was clear, it would not have been necessary to dispose of short term obligations of the United States for half their face.

Gadsden replied with scathing criticism of the course and policy of the Pierce administration; his despatches (in part) of April 5 and 18, 1856, follow (D.S., 19 Despatches, Mexico, Nos. 87 and 88):

[*No. 87, April 5, 1856, excerpts*]

In Dispatch Nº 86. was acknowledged the receipt of Dispatch Nº 60. and which is the only communication from the State Department which has reached this Mission, since 58 of the date of Nevember last [1]— Most of the Dispatches from Mexico: in this long interruption of correspondence from the U States; and which had become frequent, lengthy and important; on the part of this Legation; at a Crisis in the transition affairs in this quarter; which seemed to impose them; related to the subject of the Dispatch now recognized; and would have been found to contain much if not all of the information at this late hour sought— A Careful perusal of those official communications; with much which was made known in private confidence; would have relieved from the disturbing embarressments; which Gen[l] Almontes, just protests against the payment of the drafts: predicated on the 3 million indemnity by Santa Anna; seems to have produced

I have studiously examined the Dispatch and the voluminous correspondence: between the Mexican Minister: and the Department of State; and am much at a loss, to comprehend the object or motive of the Presidents instructions to this Legation; "to bring this matter before the Government of Mexico; and if not able "to induce to withdraw the protest against the payment of the drafts; to ask

[1] There is some confusion here; Gadsden's despatch No. 86, of March 12, 1856, acknowledged the receipt of instruction No. 58, of November 13, 1855; this despatch, No. 87, acknowledges the receipt of "Dispatch Nº 60", which is the instruction of Marcy of February 4, 1856, quoted above, and is throughout so referred to by Gadsden.

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"it to furnish reasons, which in its judgement justify the protest against the "payment of them";— When those reasons had been enlarged on in Gen[1] Almontes communications accompanying the protest; and might have been more forcible and convincing; but for the antecedant relations of that highly respected Envoy; with a Military Usurper; who on the eve of his abandonment (unable to maintain, his Camp at the Capital; had placed his signature to the greatest fraud, he had ever inflicted on a humiliated and betrayed nation— If Citizens of the United States; were principals or Partisipants in this Transaction; as is to be inferred from Dispatch 60—it only adds to the mortification; and responsibility; which *similar interferences* with Negotiations in Mexico; This Legation felt the obligation; on a former occasion, to expose; and remonstrate against; while it has enhanced the sympathy on its part, for a *Country* and a *Cause;* in the humiliation and plunder of which; even "American Money Changers" are now recognized to be in undisguised, and protected alliance— I am the more embarrassed therefore "to perceive, as I have no doubt the Mexican Government will, the "propriety of the request, through this Legation, to be furnished with these "reasons"—as the period for their being of any *value* or *force* has been permitted to pass by; and the obligations which the Secretary of State now affirms imposed on his Government; to protect drafts on time, predicated on foreign "Contracts and negotiations" which the Mexican Minister claimed in behalf of his Government the right to revise and examine; *had been disclaimed on the part of This Legation*—as will be seen in detail in Dispatches 76–78 and 80.[1]— Had Dispatch 60: with the Mexican Ministers Correspondence, been furnished at an earlier date; it would have been received as a response to the voluminous correspondence on the subject of the Mexican Government's Protests against the Santa Anna Treasury Fraud; (one of which had at a very early date been forwarded through this Legation; and would have relieved the American Minister: from a Committal on a protestation against any obligation, the President felt imposed: or "duties created" to protect and demand payment; in behalf of the holders of the protested: or withdrawn drafts— This obligation on the Executive of the U States: I had emphatically repudiated; and am unable now, to comprehend how the Law Officer, of the Government, could have come to that conviction

It appears however from Dispatch and Correspondence 60—That these obligations; which the Envoy of the U States; in his simplicity on international morality, had repudiated; were made known through other channels: and with alledged authority "as duties created" on the part of the President of the U States to "demand of Mexico"—the recognition, and the honoring of Drafts; which had been arraigned by the Opposing Sovereignty; as fraudently obtained from the Treasury—and which had the designed influence: of *forcing* from fear of further and more threatning issues between the two neighbouring Republics, than those which at present exist; A withdrawal of the Protest; and a reluctant recognition of the payment from the Messila Indemnity; against which those valuations had been declared as illegally predicated— This submission, was accomplished, as had been previously intimated to the Department, through secret and concealed Agencies; Spiritual Rappers in the dark; purporting to represent with more *fidelity* and *truth* the views and determination of the Government at Washington, than its accredeted, and *unadvised* Envoy, as to the *views* and *Responsibilities* now acknowledged as imposed on the Executive at Washington— The word *force*, is not inapplicable on this occasion; as it is known to this Legation that the Existing Government of Mexico did not acquiese voluntarily or convincingly in the respect claimed for the drafts: but rather yielded reluctantly; in their recognized weakness: amid continued internal discords: all of which were availed of by the same Instruments: to heighten distrust: under the alarm of the Consequences of continuing the Protest— The New Government, had come into power; with the most favourable dispositions towards that of the U States; and most anxious to cultivate kindred neighbourhood relations with it— The most potent opposition which it had to encounter, in its struggles to reclaim its inheritance, was from the monied power, concentrated in the vaults of a few Foreign money changers; and who through Brokers, of the same instincts; could at any time invoke the Elishas Cloak: in the prostituted American Flag; for a Cover—

[1] Respectively of November 17, December 5, and December 19, 1855; for excerpts therefrom, see Manning, *op. cit.*, IX, 795–97 803–6, 814.

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These Salamancas, as in Spain; ruled and humbled Mexico by impoverishment and Robery— They held the Masterry over Santa Anna: and his Army, through his debasing private instincts: and always public exigencies— They shared in his last supposed inheritance, from the Appropriations of Mesilla—in order that the New Government should fall heir to a bankrupted Nation: and thus become the more facile instruments in their power for future subjugation, and spoil— They were not favourable to the reassumption of *self Government:* in Mexico; because it would be American; opposed to all those Monopolies; protections and prohibitions, on which they had been so long revelling: and they recognized in the Incoming Sovereignty as Liberal in its views: that it would have the sympathy of its nearest neighbour— The Chiefs of Ayutla: in success; had therefore relied with confidence: on the Government of the U States: being gratified with the opportunity of saving to Mexico, a small moiety of the sum which was to be paid in the consideration of a new reduction of its Terretorial domains—and could not for a moment entertain the opinion: that that Friend, on whose sympathies it had reposed; could except to a protest: against that moiety being distributed, among irresponsible and private spoilers; and who were preparing to use that spoil: in *stimulating new Emutes* to *falsify* the *Revolution achieved*— Responding to these feelings; and more than just views: on our supposed relations with Mexico; and in the absence of all intellegence; or communications: in reply to frequent and importunate dispatches on this subject to the Department; there was no responsibility transcended, on the part of this Legation, in echoing Sentiments: in which it was in sympathy: however embarrising may be the advise at so late hour; that adverse opinions were held by the President: and his Legal Counsellors— The Secretary of State must perceive therefore, that while the Envoy of the U States: deeply regrets the dissentient opinions of the President: on a subject which seems to have occasioned so much embarrassment at Washington He cannot in justice to the integrety of his Mission; so impair its influence on the relations which it has been his study to promote with Mexico; as to reprove his own course; not taken, but under *mature judgement* of *events* and of *history*, at this Capital: as "to exert an opposite influence": without the Argument: so as "to induce this Government to withdraw its protest, against the payment of justly repudiated Drafts;" to ignore its sovreignty in this humiliation; and to ask, after it has from influences, adverted to above: been *forced* to this humiliation; "to furnish the reasons which in its judgement justify "the protest against the payment of them"— If however the Secretary of State still deems it important however, to place on the record of Mexican Deplomacy "the reasons which in the judgement of the Mexican Government; justified the "protest against the payment" of the Santa Anna Treasury Drafts; predicated on the Masilla indemnity; This Legation will read to the Minister Despatch 60: and furnish him with a Copy if he desires; and leave it optional with him, to reaffirm, with adenda which had been omitted; the views conveyed by Gen[l] Almonte: in justification of the protest: he had been instructed to file— The Secretary of State however may anticipate such a response, from A Minister who has been made to feel, and suffer from the responsibility of withdrawing the protest; can only be made in a spirit of subdued complaint: on the part of an insulted weak sovereignty; encompassed by Enemies: and by none more active and vindictive than the holders of drafts: from absconding; abdicating usurpation;—and which they had been forced to honor; through the threatened superior power: of a Sovereignty they had relied on as a Protector and Friend— No M[r] Marcy— Be assured and I say it with all Candor and truth—that if the Policy of the Administration at Washington be the fulfilment of the Mission of the U States; in all its relations to the Other Legitimate self and independent Sovereignties of the Americas: and this Envoy, has recognized no other Monitor; a greater than a mistake; a *Political fault* has been committed: in the whole proceedings towards Mexico in relation to the favored illegitimate appropriations by Santa Anna; on the last installment of the Messila purchase; and of those of the Senate; with the concurrance of the Executive; on the mutulation of the Original Treaty by which that Territory was acquired— It reopened all the issues which had been quieted in the provisions of that Convention: It left the legitimate claims of honest suffering Citizens of the U States to be readjusted hereafter; and under auspices far less propitious than those which influenced that

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settlement: It gave pretensions to Santa Anna: to appropriate to himself: what was intended for the relinquishment of the 11 Article of Hidalgo Gaudalupe; and by that act declaring that those obligations still remain binding on the U States— and it has impaired the influence of Your Envoy, in a constructive reproof: of his having misrepresented His Government; and while it has stimulated the interference of private Individuals in international negotiations: it has encouraged the same interpositions; always antagonistical and in Conflict: with the higher public interests and principles; which it is the obligation of the Envoy, and of the government he represents; to cherish and protect— The exposure, and at an earlier date; of private intrusion on the negotiations of this Legation: and through an unexplained Mission: who proved an instrument of the Parties: instead of An Agent of the Government; it was hoped would have been a reproof deterring from similar interferences: with the obligations and responsibilities of This Mission— But Dispatch 60, in the shield of protection, extended: would seem to have emboldened: these Intrusions in public matters; made subservient to private speculation; in renewed essays to involve the Two Governments in issues, exclusively domestic. & not National— If they have not prevented; they has postponed adjustments: which were under favourable progress; of all the disagreements between the Two Governments; and now threaten to add to the docket of just Complaints and grievances—an extended list of new and illegitimate issues;—superceeding the first—

. . . . . .

No spirit of Complaint have influenced the views here expressed— They have been stimulated by a strong sense of obligation to the responsibilities devolved on the Position of Envoy in Mexico— If the President thinks that I have faltered in the performance: or have not in fidelity fulfilled; the obligation to recall; and replace, by one who can act conscientiously, and more in accordance with opposing views: rests with the appointing power: and cannot impose the responsibility of asking for a recall; which may involve imputations of private Considerations— There is a justification; and under severe trials, of the fidelity with which, I have fulfilled the high trusts to which called: tempered possibly with a little too much zeal; and with the peculiar notion, that an American Representative abroad; is not a Member of a Deplomatic Corps; governed by the obsolete rules of deplomacy, and of Ceremonies: but an Exponent of the Ideas and Promises; of the *Institutions* and the *Law* to which he has made a public pledge—and that he is ameniable to the Same Tribunal: of a Higher and Coordinate Functionary; though to Him, he may owe the nomination to the position called upon to Fill—

[*No. 88, April 18, 1856, excerpt*]

Such have been the interceptions: and interruptions; in the Correspondence between this Capital and the U States: that I have deemed it important to forward by this mail a duplicate of N° *87*, as the matter therein entertained: is calculated to impair the relations: between the two Countries; for which this Legation; after its previous correspondence; cannot hold itself responsible— Had the Secretary of State, left the adjustment of the 3 millions indemnity; in *conformity* to the *stipulations* of the *Treaty:* to this Legation (and which had some Agency in the negotiation), with the Legitimate Government entitled to it; the American Envoy; might have escaped from the Continued and new threatning issues: which previous confidence, in his professions to the Incoming Government; had prepared the path to harmony— The action at Washington however; on that Case as an *American Claim;* and without any advise to this Mission; who had imbibed and acted under opposing views; has left it in a false, and embarrassed position; from which future explanations can alone extricate it— This mistified Deplomacy: corresponds so much with interpositions; through a Confidential Agent, on a former occasion; with the obligations of this Legation; that the Envoy in justice to the integrety of the high trusts reposed in him: feels constrained; however reluctantly to enter his solemn protest; that he may not be held responsible for a failure of Expectations on a Mission he was called upon to fulfill— The issues

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between the two Governments are multiplying daly: and have been encouraged by the shield of protection which has been extended to a great fraud, on Mexico;— Other foreign claims have invoked the protection of this Legation as assimilated to; and as corresponding in all their relations to those, which have been favored; and most signally imposed on this subdued Country, by the power of the United States; while the legitimate, and higher protracted claims of Citizens of the U States: are left to the adjustment of a Mission *weakened* in all *its influences* by a Department: on which it had confidently relied for endorsement; and support—

While in Washington Gadsden was notified of his recall on June 30, 1856 (Manning, *op. cit.*, IX, 205); he returned to Mexico City and continued in exercise of his official functions until the arrival of his successor, John Forsyth, of Alabama (who had been appointed on July 21, 1856), in the following October. Various reasons have been assigned for the recall of Gadsden; his strained relations with Marcy may have been one of them (see Garber, 177–78).

Article 8

Article 8 of the Gadsden Treaty was terminated by the treaty signed at Washington April 13, 1937 (Treaty Series No. 932; 52 Statutes at Large, 1457–59), which went into effect on December 21, 1937, when the ratifications were exchanged at Washington.

In his message of April 22, 1937, submitting the treaty to the Senate, President Roosevelt wrote:

In keeping with my policy of the good neighbor in the relations of the United States with the governments of the other American republics, I agreed to a request made by the Mexican Government that article VIII of the treaty between the United States and Mexico signed on December 30, 1853, and commonly known as the Gadsden Treaty, be terminated by treaty; and to this end I invested the Secretary of State with plenary power to negotiate, conclude, and sign a treaty between the United States and the United Mexican States for that purpose.

The treaty terminating article VIII of the treaty of December 30, 1853, was signed by the Secretary of State and the Mexican Ambassador at Washington on April 13, 1937, and I transmit it herewith to the Senate.

Article VIII of the treaty of 1853, while of potential value at the time it was negotiated, has never operated and has no present-day use, since the work contemplated in its first paragraph was undertaken and completed by Mexico without the assistance of the United States, and transportation between the eastern and western parts of the United States is now better served by transcontinental means of transportation across the United States or by the Panama Canal than it can be served across the Isthmus of Tehuantepec to which the right was granted by article VIII of the Gadsden Treaty.

I ask the advice and consent of the Senate to ratification of the treaty of April 13, 1937, herewith transmitted.

. . . . . .

The termination of article VIII of the treaty of December 30, 1853, will not affect any other provisions of that treaty, and they will remain in full force and effect.

A press release of the Department of State of December 21, 1937, included the following (Press Releases, XVII, No. 430, pp. 510–11):

So far as the Department of State is informed, the provisions of the terminated article had never been operative, and subsequent development of other established

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means of communication between the Atlantic and Pacific coasts of the United States, made them obsolete.

The other provisions of the Gadsden Treaty are not affected by the termination of article VIII, and they remain in full force.

American Claims Against Mexico

In a report to the Senate dated June 30, 1852, Secretary of State Webster wrote this (Senate Executive Document No. 95, 32d Congress, 1st session, serial 621, p. 2):

> It is of great importance that the claims of American citizens against foreign governments, in behalf of which the interposition of this government is required, should be more thoroughly examined and more thoroughly understood than may be expected from the exparte statements of the claimants, inasmuch as the honor of the government requires that its interposition be given in no case not apparently founded in law and justice.

That the Department of State some months later had insufficient knowledge regarding American claims against Mexico and endeavored (fruitlessly) to become more fully informed is shown by this final paragraph of the instruction of October 14, 1852 (in part in Manning, *op. cit.*, IX, 121–25), from Acting Secretary of State Conrad to Alfred Conkling, Minister to Mexico (D.S., 16 Instructions, Mexico, 339–51):

> With a view to enable this Department to form some estimate of the amount of the claims of citizens of the United States against Mexico growing out of wrongs committed by that government, or its agents you will please, at your earliest leisure, to examine them respectively, and to give your opinion as to their justice, and state the amount for which you consider them respectively well founded.

Because of uncertainty as to the extent of American claims against Mexico, Secretary of State Marcy was unwilling for the United States to assume them all; his instructions to Gadsden of July 15, 1853, were indefinite on the subject; the instructions of October 22, 1853, would have limited the release of American claims to those "arising under any articles of the Treaty of Guadalupe Hidalgo"; further explanation of his views is found in the instruction of December 22, 1853; such of the American claims as arose under the Treaty of Guadalupe Hidalgo Marcy was prepared to release and have paid by the American Treasury; without some understanding with the claimants under the Garay Grant "as to what would be accepted by them" he wrote that the Government "is unwilling to assume the payment of it"; and the other claims, "independent of those arising under the Treaty" of Guadalupe Hidalgo, he thought "are not sufficiently known to make it a matter of prudence for this government to assume them, or to hazard the success of the negotiation by reserving a sum to cover the liability which would be incurred by the general assumption of them" (Manning, *op. cit.*, IX, 151; not received at Mexico City before the signing of the Gadsden Treaty).

However, in Articles 3 and 4 of the signed treaty were clauses whereby the United States assumed "all the claims of their Citizens . . . which may have arisen" since the signature of the Treaty of Guadalupe Hidalgo, undertook to satisfy the same to the extent of $5,000,000,

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and exonerated Mexico therefrom; the amendments proposed by President Pierce would have limited the released and assumed claims to those arising "under treaty or the law of nations" (substantially two of Marcy's three categories); the Senate Committee on Foreign Relations would have excepted from that limitation the claim of the holders of the Garay Grant, although with words excluding "anticipated profits". Before the Senate voted on the claims clauses there was before that body the Marcy report of March 29 (printed above), from which these paragraphs are again quoted:

> The accompanying list of claims of the citizens of the United States against Mexico includes, it is believed, all which have been brought to the notice of the Department, and the origin of them, so far as the papers on file disclose that fact.
>
> The statement has been made out from the documents presented by the complaining parties. Many of them are unsustained by proof, and some so imperfectly stated as scarcely to disclose the true motive of the acts complained of. On the other hand, several of the more important claims are accompanied with very voluminous documents which it would be necessary to examine critically in order to ascertain precisely the character of the claims. Those described in the accompanying statement as claims "for seizure of goods", "excess of duties", &c, are of this nature. Many of the documents are in Spanish of which no translations have been furnished, or, as yet, made at the Department. To make translations of them would require much time and labor.
>
> There are, undoubtedly, a number of claims by our citizens presented to our Legation at Mexico, of which no account is found in this Department.

The list of claims which accompanied Marcy's report was this (D.S., 7 Report Book, 60–62):

List of unadjusted claims of citizens of the United States against the Republic of Mexico.

	Name of Claimant.	Ground of Claim.	Amount.
1	F. Peters	for seizure of schooner Anna Maria at Vera Cruz, 1848	$15,000 00
2	John Ehlers	seizure of tobacco at Durango, violation of 19th Art. of Treaty	20,000 00
3	John Dusenbury	Durango, Embargo of his goods and stoppage of his business	20,000. 00
4	Howard & Sons' Line of Steamers	for seizure of part of the Cargo of Ship Manlin at Acapulco	20,000 00
5	Wilkinson & Montgomery	for the seizure of goods in Camargo, in Nov. 1849	80,000 00
6	P. N. Paillet	for overpaid duties at Tabasco in 1850	5,000 00
7	F. Labrere	for do in Tampico	10,000 00
8	T. Labrere	for seizure of Tobacco at Tampico. violation of 19 Art	100,000 00
9	G. Lacarde	for seizure of Scr. L. M. Hitchcock at Lobos Island	40,000. 00
10	Washington Kerr	for seizure of Tobacco at Durango—19 Art	100,000 00
11	Do	for seizure of Madapoallans	40,000 00
12	John Parrott	for detention & loss on tobacco, 19 Art	70,000 00

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	Name of Claimant.	Ground of Claim.	Amount.
13	John Parrott	for Mules abandoned at Guadalupe y Calvo	$150, 000 00
14	J. A. Lynch	seizure of furniture at Matamoras	5, 000 00
15	S. A. Belden & Co	Matamoras, Tobacco claim violation of 19 Art	150, 000 00
16	Estate of C. Carroll	murdered near Linares in July, 1848	150, 000 00
17	Robert B. Kingsbury	Tobacco in Monterey, violation of 19 Art	25, 000 00
18	Baker & Grayson	Do	10, 000 00
19	John Ehlers & Co	Matamoras Do	30, 000 00
20	P. C. Shannon	Do Do	30, 000 00
21	F. Maxan	" Business broken up	35, 000 00
22	F. Maxan	" Tobacco, 19th Art	30, 000 00
23	M. Surgeneau [1]	Do Do	5, 000 00
24	Jose Costellto	Tampico " "	100, 000 00
25	J. Keynolan [2]	Vera Cruz " "	30, 000 00
26	V. Galloso	New Orleans, seizure of goods in Jalapa, 19th Art	80, 000. 00
27	Julius Merle	Vera Cruz, Mexican courts reversed decision of U.S. Military Courts & gave back property he had purchased under judgement & execution	10, 000 00
28	Oscar Robert	seizure of goods & breaking up of business in Tampico, imprisonment &c	100, 000 00
29	Lionel Moses	Vera Cruz, seizure of good and arbitrary fines, breaking up his business	100, 000. 00
30	Joseph Moses	Seizure of goods	100, 000. 00
31	Carlos Butterfield and E. Huntington	Destruction of cargo of provisions at Tabasco	11, 000. 00
32	Maxwell	Denegation of Justice	10, 000. 00
33	Hixon & O. Boyle	Metamoras, seizure of goods and ruin of business, 19 Art	30, 000 00
34	N. Brewer	seizure of goods, 19 Art	50, 000 00
35	W. R. Glover	seizure of specie & ruin of business	125, 000 00
36	Turges of Durango	Plunder of the estate of Cucien deceased & denegation of justice	2, 300, 000 00
37	James Selkirk	Seizure of the "Helen Mar"	5, 000 00
38	F. Bronner	Illegal exaction of duties	46, 717. 15
39	A. Speyer	seizure of cash	1, 000 00
40	Procter Lyons	seizure of goods	50, 000 00
41	Jos. Moses	Damages to business	10, 000 00
42	F. W. Rice	Imprisonment	50, 000 00
43	B. & F. Lament	Property purchased & price seized without delivery of property	26, 000 00
44	Jose M. Toscano	Appropriation of his property	1, 088 00
45	W. A. Wyse	services rendered to Mexico	7, 781 00
46	Tyler, Milner & Jones	seizure of gold dust	3, 208 00
47	Assignees of Garay	Breach of Contract	5, 283, 000 00

[1] "Suzeneau" is written in pencil above this name.
[2] "Reynolds" is written in pencil above this name.

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	Name of Claimant.	Ground of Claim.	Amount.
48	W. H. Aspinwall	seizure of funds of Pacific Mail Steamship Co	$45, 350 70
49	McIlheny	Imprisonment	Not Stated.
50	A. Blumenkren	Denial of justice	Do
51	S. V. R. Ryan	Imprisonment	"
52	Heirs of Com. Porter	Value of grant of land	"
53	James Magee	Imprisonment & losses	119, 375 00
54	D. A. Ogle	Personal injuries & losses	Not Stated.
55	W. S. Parrott	Failure of Mex. Gov. furnish proof of claim under Treaty of Guadalupe Hidalgo	" "
			[1] $9, 444, 519. 85

[1] The correct total is $9,834,519.85.

In view of Marcy's observations and figures it is perhaps not surprising that the Senate voted unanimously to delete all clauses of the treaty regarding American claims; so the treaty which went into force was silent as to claims against Mexico for the period from February 2, 1848, to December 30, 1853, which, according to the signed treaty, would have been adjudicated and paid.

Gadsden seems to have thought that "legitimate & urgent private claims" (i.e., excluding that of Hargous and associates under the Garay Grant) might come to $3,000,000 (see Manning, *op. cit.*, IX, 668, November 20, 1853); in 1857 Secretary of State Cass proposed a convention which would have reserved $2,000,000 for claims "not founded on contract", the balance, if any, after adjudication, to be paid to Mexico (see *ibid.*, 237); but no one in 1853–54 had the data requisite for a fair estimate.

One group of claims existing in 1853 comprised those arising under Article 19 of the Treaty of Guadalupe Hidalgo; it is said that these were eighteen in number, "amounting to almost a million dollars", fourteen of which were tobacco claims (Rippy, 43); but the amount given is from the "exparte statements of the claimants"; and the unreliability of such statements may be instanced by a few tobacco and other cases.

One of the tobacco claims was that of S. A. Belden & Company; in the Marcy list it figures at $150,000; the case had been the subject of a Senate committee report in 1852; in the proceedings before the Commission under the convention of July 4, 1868, the principal of the claim was adjudicated at $23,154.56 (see Moore, International Arbitrations, IV, 3808–13, quoting the Senate committee report); the claim had been filed with the Commission at $314,684.12 (Senate Executive Document No. 31, 44th Congress, 2d session, serial 1720, pp. 24–25, case No. 131). Another tobacco case in the Marcy list is that of Washington Kerr for $100,000; this claim was dismissed by the Commission (*ibid.*, case No. 153). Two other claims listed by Marcy are those of John Parrott for $220,000; in the proceedings mentioned they were dismissed (*ibid.*, 22–23, cases Nos. 103 and 104;

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Moore, *op. cit.*, 3808). Francis W. Rice claimed $50,000; in 1872 he was awarded $4,000, without interest (*ibid.*, 3248–49; case No. 7 before the Commission).

Agreement between the United States and Mexico for the settlement of claims subsequent to the Treaty of Guadalupe Hidalgo was made by the convention of July 4, 1868 (15 Statutes at Large, 679–85). Events leading up to that convention and proceedings had thereunder are narrated in Moore, International Arbitrations, II, 1287–1358 (and for references to discussion of particular cases, see the index in *ibid.*, V, 5182–84).

Under the 1868 convention, claims for a period of twenty-one years were adjudicated, from February 2, 1848, to February 1, 1869 (*ibid.*, II, 1352). Claims against Mexico numbered 1,017, and awards were made in 186 cases (*ibid.*, 1313–14); the great sum of $470,126,613.40 [1] is given as the aggregate of the claims of citizens of the United States; but there were many American claims for unstated amounts which are beyond that total; the awards were $4,125,622.20,[2] including interest at 6 percent to July 31, 1876, in those cases in which interest was allowed (*ibid.*, 1319); in numerous cases the interest awarded was more than the principal.

The claim for $5,283,000 made by the Hargous interests under the Garay Grant, whatever its worth, if any, had been filed in the Department of State in 1852; the famous case of the Pious Fund, adjudicated under the 1868 convention (see *ibid.*, 1348–52) and again in 1902 (see American Journal of International Law, II, 893–902), was not officially known in 1854. Apart from those two cases, and taking as a correct and inclusive basis the awards made under the convention of July 4, 1868, the aggregate amount of valid American claims against Mexico existing at the date of the Gadsden Treaty did not exceed $210,000.[3]

[1] This included one claim for $322,907,519.33, which, with interest, came to the fantastic amount of $546,315,038.66 (see Moore, *op. cit.*, III, 3132–33). Even if this claim is not taken into account, the awards were less than 3 percent of the total of the claims for stated amounts.

[2] Somewhat less in United States money. More than three fourths (in amount) of the awards were expressed in Mexican gold coin, the dollar of which was agreed to be equivalent to 98.3939 cents of the gold dollar of the United States (Moore, *op. cit.*, II, 1321–22); the difference is nearly $53,000; and awards for over $400,000 were in United States currency. Moreover, two awards totaling $1,170,852 Mexican gold were later found to be of fraudulent origin (see *ibid.*, 1324–48; *La Abra Silver Mining Company* v. *United States*, 175 U.S. 423–500; *United States* v. *Alice Weil et al.*, 35 Court of Claims Reports, 42–89). Regarding those two claims, see also R. Earl McClendon, "The Weil and La Abra Claims against Mexico", in Hispanic American Historical Review, XIX, 31–54.

[3] Apart from the case of the Pious Fund, not more than nineteen awards were made by the Commission under the 1868 convention on claims based, in whole or in part, on events of 1853 or earlier; the aggregate of those nineteen awards is $419,976.43 (see the list of American claims in serial 1720, docket Nos. 7, 8, 24, 70, 83, 113, 115, 125, 131, 143, 145, 165, 178a, 178b, 183, 197, 442, 479, 607); and it is reasonable to estimate that more than half of that amount was for interest accruing after 1854.

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Treaty Series No. 183
11 Statutes at Large, 597–98
18 *ibid.*, pt. 2, Public Treaties, 446–48

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JAPAN : MARCH 31, 1854

Perry's Treaty. Treaty of Peace and Amity, signed at Kanagawa March 31, 1854, with "Reconnoissance of the Harbor of Simoda, Japan" (see Article 5). Original of the treaty in English and Japanese, with certified translations in Chinese and Netherlandish. Submitted to the Senate July 13, 1854. (Message of July 12, 1854.) Resolution of advice and consent July 15, 1854. Ratified by the United States August 7, 1854. Ratified by Japan in the 12th month of the 1st year of Ansei (January 18 to February 16, 1855). Ratifications exchanged at Shimoda February 21, 1855. Proclaimed June 22, 1855.

Additional Regulations, signed at Shimoda June 17, 1854. Original in English and Japanese, with certified translation in Netherlandish (which is not available). As to ratification of the Additional Regulations by the United States, see the editorial notes. Ratified by Japan in the 12th month of the 1st year of Ansei (January 18 to February 16, 1855). Japanese instrument of ratification delivered February 21, 1855. Not proclaimed.

Regulations Respecting Pilots and the Supplying of American Vessels Entering the Port of Shimoda, signed at Shimoda June 23, 1854, and Certificate of Appointment of Pilots and Rates for Pilotage at Shimoda, signed at Shimoda June 22, 1854. Originals (semble) in English only, with certified translations in Netherlandish. Not subject to ratification. Not proclaimed.

The papers following this headnote are these, in the order stated: (1) English version of the treaty; (2) Japanese version of the treaty, reproduced in facsimile (somewhat reduced) page for page from the original manuscript but in left-to-right order of pagination; (3) certified Chinese translation of the treaty, reproduced in facsimile (somewhat reduced) page for page from the original manuscript but in left-to-right order of pagination; (4) certified Netherlandish translation of the treaty; (5) English version of the Additional Regulations; (6) Japanese version of the Additional Regulations, reproduced in facsimile (somewhat reduced) page for page from the original Japanese instrument of ratification thereof but in left-to-right order of pagination; (7) English version of the Regulations Respecting Pilots and (8) certified Netherlandish translation thereof, in parallel columns; (9) English version of the Certificate of Appointment of Pilots and (10) certified Netherlandish translation thereof, in parallel columns. A full-scale reproduction of the chart of Article 5 is in a pocket inside the back cover of this volume.

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The United States of America, and the Empire of Japan, desiring to establish firm, lasting and sincere friendship between the two Nations, have resolved to fix in a manner clear and positive, by means of a Treaty or general convention of peace and Amity, the rules which shall in future be mutually observed in the intercourse of their respective Countries; for which most desirable object, the President of the United States has conferred full powers on his Commissioner, Matthew Calbraith Perry, Special Ambassador of the United States to Japan: And the August Sovereign of Japan, has given similar full powers to his Commissioners, Hayashi, Dai-gaku no-kami; Ido, Prince of Tsus-Sima; Izawa, Prince of Mima-saki; and Udono, Member of the Board of Revenue. And the said Commissioners after having exchanged their said full powers, and duly considered the premises, have agreed to the following Articles.

ARTICLE I.

There shall be a perfect, permanent, and universal peace, and a sincere and cordial amity between the United States of America, on the one part, and the Empire of Japan on the other part; and between their people respectively, without exception of persons or places.

ARTICLE II.

The Port of Simoda in the principality of Idzu, and the Port of Hakodade, in the principality of Matsmai, are granted by the Japanese as ports for the reception of American Ships, where they can be supplied with Wood, Water, provisions, and Coal, and other articles their necessities may require as far as the Japanese have them. The time for opening the first named Port is immediately on signing this Treaty; the last named Port is to be opened immediately after the same day in the ensuing Japanese Year.

Note. A tariff of prices shall be given by the Japanese Officers of the things which they can furnish, payment for which shall be made in Gold and Silver Coin.

ARTICLE III.

Whenever Ships of the United States are thrown or wrecked on the Coast of Japan, the Japanese vessels will assist them, and carry their crews to Simoda, or Hakodade, and hand them over to their Countrymen appointed to receive them; whatever articles the Shipwrecked men may have preserved shall likewise be restored, and the expenses incurred in the rescue and support of Americans and Japanese who may thus be thrown upon the shores of either nation are not to be refunded.

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ARTICLE IV.

Those Shipwrecked persons and other Citizens of the United States shall be free as in other Countries, and not subjected to confinement, but shall be amenable to just laws.

ARTICLE V.

Shipwrecked men and other Citizens of the United States, temporarily living at Simoda and Hakodade shall not be subject to such restrictions and confinement as the Dutch and Chinese are at Nagasaki, but shall be free at Simoda to go where they please within the limits of Seven Japanese miles (or Ri.) from a small Island in the harbor of Simoda, marked on the accompanying Chart, hereto appended:—and shall in like manner be free to go where they please at Hakodade, within limits to be defined after the visit of the United States Squadron to that place.

ARTICLE VI

If there be any other sort of goods wanted, or any business which shall require to be arranged, there shall be careful deliberation between the parties in order to settle such matters.

ARTICLE VII.

It is agreed that Ships of the United States resorting to the ports open to them, shall be permitted to exchange gold and Silver Coin and articles of goods for other articles of goods, under such regulations as shall be temporarily established by the Japanese Government for that purpose. It is stipulated however that the Ships of the United States shall be permitted to carry away whatever articles they are unwilling to exchange.

ARTICLE VIII.

Wood, water, provisions, Coal and goods required shall only be procured through the agency of Japanese Officers appointed for that purpose, and in no other manner.

ARTICLE IX.

It is agreed, that if at any future day the government of Japan shall grant to any other Nation or Nations privileges and advantages which are not herein granted to the United States, and the Citizens thereof, that these same privileges and advantages shall be granted likewise to the United States, and to the Citizens thereof, without any consultation or delay.

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ARTICLE X.

Ships of the United States shall be permitted to resort to no other ports in Japan but Simoda and Hakodade unless in distress or forced by stress of weather.

ARTICLE XI.

There shall be appointed by the Government of the United States, Consuls or Agents to reside in Simoda at any time after the expiration of Eighteen months from the date of the Signing of this Treaty, provided that either of the two governments deem such arrangement necessary.

ARTICLE XII.

The present Convention having been concluded and duly signed, shall be obligatory and faithfully observed by the United States of America and Japan, and by the Citizens and Subjects of each respective power; and it is to be ratified and approved by the President of the United States, by and with the advice and consent of the Senate thereof, and by the August Sovereign of Japan, and the ratification shall be exchanged within eighteen months from the date of the Signature thereof, or sooner if practicable.

In faith whereof, we the respective plenipotentiaries of the United States of America and the Empire of Japan aforesaid have signed and sealed these presents.

Done at Kanagawa this thirty first day of March in the Year of our Lord Jesus Christ, One thousand eight hundred and fifty four; and of Kayei, the Seventh Year, third month and Third—day.

M, C, PERRY

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約條

亜墨利加合衆國と帝國日本兩國
并人民誠實不朽の親睦を結ひ
兩國人民の交親を旨とし向後可
守ヶ條相立ん爲合衆國より全權
マテユカルブレトヘルリ人
名を日本江差越し

日本君主よりハ全權林大學頭
井戸對馬守伊澤美作守鵜殿
民部少輔を差越し敕諭を信し
て雙方左之通取極ハ

第一ヶ条

一日本と合衆國とハ其人民永世不

朽れ和親を取結ひ場に人柄れ
差別無く事

第二ヶ条

一伊豆下田松前地箱館れ夫港を
日本政府に於て亜墨利加船薪
水食料石炭欠乏の品を日本

人ニ調ル丈ヲ給ル為免渡来ニ儀
差免ニ尤下田港ヲ約條書
面調印ニ上即時相開ニ箱
館ヲ来年三月より始ル事
一給ヲ歴ニ品物直段書ニ後ヲ
日本役人より渡ニ右代料ヲ

金銀錢を以て可お辨ひ事

第三ヶ条

一合衆國の私日本海濱漂着之時扶助致し其漂民を下田又は箱館に護送致し本國の者更に一ヶ所持の品物を回招ニ致し尤漂民諸雜費は各國互ニ

同招之事有不及償之事

第四ヶ条

一 漂着或ハ渡来の人民之扱之後ニ
他國同招緩優不有之閉籠後
致可愛也保正直ハ法度ニハ伏
従いあるし之事

第五ヶ条

一合衆國ハ漂民其他の者とも当分
下田ハ箱館逗留中長崎ニ於て唐
和葉人同様閉ハ龍免寄屋ハ和
扱無之下田港内の小島周り凡
七里ハ内ハ徬手ニ徘徊ハ無一箱

館港ニ後ハ追て取極ル事

第六ヶ条

一 必用ハ不拘其外可有叶事を

雙方談判ニ上ニ仕極ル事

第七ヶ条

一 合衆國ハ船右ニ港ニ渡来ハ

時金銀錢并不拘を以て入用之
品お調はを差免しは尤日本政府
の規定に相違ゆへ且合衆國の
船より差出は不拘を日本人に好
て差遣は時も更無ゆへ事

第八ヶ条

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一 薪水食料石炭并欠乏の品を
求る時々其地の役人にて扱ひ
屬く私に出行せ屬まらざる事

第九ヶ条

一 日本政府外國人に當節要量利
加人に 一定免ヶ屬出免しの節は

亜墨利加人江も同様若免一事右々
付談判猶豫ニ致し事

第十ヶ条

一 合衆國ハ船若難風ニ逢さる時
下田箱館港ハ外猥ニ渡来不
致し事

第十一ヶ条

一 両國政府に於て無機役ならしは
模様により合衆國官吏ともの下
因に差置は後も一のなし尤約定調
印より十八ヶ月後に無しはなき及
其儀は事

第十二ヶ条

一 今般ハ約條ハ定ハ上ハ五國の者
堅ハ守ヘ中尤合衆國主ニ於て長公
會大臣と評議一定ニ後書を日本
大君ニ致し此事今より後十八ヶ月
を過君上許容ニ約條ハ替し事

右之條日本亜墨利加兩國ゟ
全權調印せしむる者也

嘉永七年三月三日

林大學頭
井戸對馬守

伊澤美作守

鵜殿民部少輔

條約

現今亞美理駕合衆國謀與日本
國人交相親睦將依此意以定後
来久守之章程是以
合衆國大統領差全權被理到於
日本
日本國大君差全權林大學頭井

戶對馬守伊澤美作守鵜殿民部
少輔相與遵奉　勅諭立約如
左

一兩國之人嗣後當互相親睦不得
以其人之高下貴賤與所遇異地
而各別視之也

一日本國政府今定下田箱館兩港

133042—42——32

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倣為合衆國舡發薪水食料石炭
等諸缺乏物之現存者儘數給之
之地准其駕舶入港但下田港應
以鈴印約書之日為之始箱館應
以来年三月而始開其發給諸物
應自日本官吏講價報知而抵以
洋金洋銀也

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一合衆國船漂到日本諸處海濱者應救恤周濟併其所携諸物具船送致之于下田或箱館附之該國人到港者其周濟漂民諸費項彼此所同兩國皆不用追支也

一漂民及到港合衆國人應同海外諸國之俗從容待之不得一處安

置也但至日本正理之例合衆國
人亦不得不甘心從順
一合衆國漂民及其他到港者兩港
官吏不應倣長崎港置唐山和蘭
諸國人之制而錮禁之也但下田
港則其港内小島居中向四方能
步遊七里若箱館港行步之規應

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送日後量度較定

一或要覓必需諸物及其餘宜見允准之事應俟兩國議定

一合衆國舡到兩港者准其以洋金洋銀及諸貨抵換必需諸物應謹守日本政府法制若其所發諸貨不中日本人之意而却之者合衆

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國人應甘心帶回

一其取薪水食料石炭及缺乏諸物皆應從該地官吏等幹辦凡一支一收皆不得私下相與也

一嗣後日本政府倘以今不相允於合衆國之事與他海外諸國相允則亦應同允之于合衆國毋庸遲

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緩待議也

一両港既開則合衆國人除猝遇風颶之外不得向別處恣意入港也

一倘両國政府均有不得已之事情或應置合衆國總領于下田但置總領之事應以鈐印約書以来十八月後為期

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一條約一定兩國各官民自應謹守
且
合衆國大統領同長公會大臣議
定允肯致書于
日本大君此事應以今後十八個
月即將兩國 君上批准之條約
互換

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已上

約書如上兩國全權諸臣下印作證

嘉永七年甲寅三月三日即

紀年一千八百五十四年三月卅一日

在横濱村鈴蓋關防

松崎滿太郎

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[Translation]

Ware Vertaling

Verdrag

De Vereenigde staten van Amerika en het keizerrijk Japan wenschende te sluiten opregte en duurzame vriendschap tusschen beide natiën hebben besloten, door middel van een verdrag op eene duidelijke en bepaalde wijze vast te stellen de regelen welke voortaan in den omgang van beide natien met elkander wederkeerig willen worden in acht genomen; ten dien einde is onbepaalde volmagt verleend geworden door den President van de vereenigde staten aan zijnen gevolmagtigde Mathew Calbraeth Perry buitengewoon afgezant naar Japan en door den Doorluchtigen Heerscher van het Japansche Rijk aan deszelfs gevolmagtigden Hajasi Daigak no kami, Ido Tsoesima no kami, Izawa Mimasaka no kami, Oedono Minboe Sioju.

En gevolmagtigden voormeld na elkanders geloofsbrieven te hebben gezien en goedgekeurd zijn overeengekomen het navolgende.

ARTIKKEL 1.

Daar zal zijn volkomen duurzame en algemeene vrede en opregte vriendschap tusschen de vereenigde staten en Japan en tusschen de ingezetenen van beide landen zonder uitzondering van plaatsen of persoonen.

ARTIKEL 2.

De haven van *Simoda* in het vorstendom *Idzu* en de haven van *Hakodate* in het vorstendom *Matsoemai* worden door de Japansche Regering toegestaan als havens waar Amerikaansche schepen zullen kunnen binnen loopen ter verkrijging van hout, water, levensbehoeften, steenkool en al wat noodig mogt zijn voor zoo ver zulks door de Japonezen kan worden geleverd. De eerste genoemde haven zal geopend zijn onmiddellijk na het onderteekenen van dit verdrag, en de laatstegenoemde haven in de derde maand van het toekomende jaar.

Een tarief van prijzen zal door daartoe bevoegde Japansche beambten worden gegeven van al zoodanige voorwerpen welke geleverd kunnen worden, waarvoor in gouden en zilveren munt zal worden betaald.

ARTIKEL 3.

Wanneer schepen van de Vereenigde Staten op de Japansche kust geworpen worden of schipbreuk lijden, zullen dezelve zoo veel mogelijk bijstand genieten en derzelver bemanning naar *Simoda* of *Hakodate* worden gebragt om aldaar door hunne landgenooten te worden

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ontvangen; gelijkerwijze zal aan hen worden teruggegeven wat hun mogt toebehooren, en zullen aan beide Regeringen de onkosten voor het redden en het onderhoud van schipbreukelingen niet in rekening worden gebragt

ARTIKEL 4.

Schipbreukelingen en ingezetenen van de vereenigde staten zullen vrij zijn als in andere landen en niet opgesloten worden, doch deugdelijk onderwerpen zijn aan regtvaardige wetten.

ARTIKEL 5.

Schipbreukelingen en ingezetenen van de vereenigde staten tijdelijk verblijf houdende in *Simoda* en *Hakodate* zullen niet onderworpen zijn aan opsluiting en beperkingen zoo als de Nederlanders en Chinezen in Nagasaki, doch vrij zich ongehinderd te bewegen binnen grenzen welke bij deze worden bepaald op zeven Japansche mijlen (Li) in het rond uitgaande van het eiland in de haven van *Simoda* als aangewezen op nevensgaande kaart aan deze aangehecht, en voor *Hakodate* zullen de grenzen later bepaald worden.

ARTIKEL 6.

Indien iets anders noodig mogt zijn of eenige schikking te treffen viel, zal zulks in zorgvuldige overweging genomen en geregeld worden.

ARTIKEL 7.

In de voormelde havens, welke schepen van de vereenigde staten mogen binnen loopen zal het geoorloofd zijn goud en zilver geld en goederen te verruilen tegen waren en goederen onder zoodanige bepalingen als bij dezen door de Japansche Regering ten dien einde zullen worden vastgesteld. En is het verder bepaald dat het vergund zal zijn om in Amerikaansche schepen terug te nemen en weg te voeren zoodanige goederen, welke de eigenaar daarvan niet heeft willen verruilen.

ARTIKEL 8.

Hout, water, levensbehoeften, steenkool en alle goederen welke noodig mogten zijn zullen alleen kunnen worden verkregen door tusschenkomst van bevoegde Japansche ambtenaren en op geene andere wijze.

ARTIKEL 9.

Indien in vervolg van tijd de Regering van Japan aan eenige andere Natie of Natiën verleenen mogt voorregten of privilegien welke nog

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niet zijn verleend geworden aan de vereenigde staten en derzelver ingezetenen zal alsdan gelijke voorregten of privilegien zullen worden verleend aan de vereenigde staten en derzelver ingezetenen zonder verwijl en zonder dat daarvoor verdere beraadslaging noodig zijn.

ARTIKEL 10.

Schepen van de vereenigde staten zullen geene andere havens in Japan dan *Simoda* en *Hakodate* mogen binnen loopen, tenzij in hoogen nood of storm gedwongen.

ARTIKEL 11.

Consuls of Agenten om verblijf te houden in *Simoda* zullen door de Regering van de vereenigde staten worden benoemd, wanneer zulks door een van beide Regeringen zal worden noodig geoordeeld, doch niet dan na achtien maanden van het onderteekenen van dit verdrag.

ARTIKEL 12.

Wanneer de tegenwoodige overeenkomst zal zijn gesloten, zal dezelve verbindend zijn voor en getrouwelijk worden nagekomen door de vereenigde Staten van Amerika en Japan en door iederen ingezetenen en onderdanen van beide in het bijzonder. Deze overeenkomst of verdrag zal worden geratificeerd door den President van de vereenigde staten met den raad en de toestemming van den Senaat daarvan en door den Doorluchtigen Heerscher van het keizerrijk Japan; en zullen de ratificatiën gewisseld worden binnen achtien maanden na den datum van het onderteekenen dezes

Ten blijke waarvan wij de gevolmagtigden van de vereenigde staten van Amerika en het keizerrijk Japan voormeld, hetzelve hebben onderteekend en ons zegel aangehecht

Gedaan en geteekend in Kanagawa
Kaei sitsinen sangoeats mikka (den 31ᵉ maart 1854.)

Op last van de hooge Heeren getiapt

MORIJAMA EINOSKE [Seal]

ADDITIONAL REGULATIONS,

Agreed to between Commodore MATTHEW C. PERRY, Special Envoy to Japan, from the United States of America, and HAYASHI DAIGAKU NO-KAMI; IDO, Prince of Tsus-sima; IZAWA, Prince of Mimasaki; TSUDZUKI, Prince of Suruga; UDONO, Member of the board of Revenue; TAKE NO UCHI SHEITARO, and MATSUSAKI MICHITARO;

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Commissioners of the Emperor of Japan, on behalf of their respective governments.

ARTICLE 1ST.—The Imperial Governors of Simoda will place Watch Stations wherever they deem best, to designate the limits of their jurisdiction;—but Americans are at liberty to go through them, unrestricted, within the limits of seven Japanese Ri, or miles; and those who are found transgressing Japanese laws, may be apprehended by the police and taken on board their ships.

ART. 2ND:—Three landing places shall be constructed for the boats of Merchant ships and Whale ships resorting to this port; one at Simoda, one at Kakizaki, and the third at the brook lying South East of Centre Island. The Citizens of the United States, will, of course, treat the Japanese Officers with proper respect.

ART. 3D:—Americans, when on shore, are not allowed access to Military establishments or private houses, without leave; but they can enter shops and visit Temples as they please.

ART. 4TH:—Two Temples, the Rioshen at Simoda, and the Yokushen at Kakizaki, are assigned as resting places for persons in their walks, until public houses and inns are erected for their convenience.

ART. 5TH:—Near the Temple Yokushen at Kakizaki, a burial ground has been set apart for Americans; where their graves and tombs shall not be molested.

ART. 6TH:—It is stipulated in the treaty of Kanagawa, that coal will be furnished at Hakodadi, but as it is very difficult for the Japanese to supply it at that port, Commodore Perry promises to mention this to his government, in order that the Japanese government may be relieved from the obligation of making that port a coal depot.

ART. 7TH:—It is agreed that henceforth the Chinese language shall not be employed in Official communications between the two Governments, except when there is no Dutch Interpreter.

ART. 8TH:—A Harbor master and three skillful Pilots have been appointed for the port of Simoda.

ART. 9TH:—Whenever goods are selected in the shops, they shall be marked with the name of the purchaser and the price agreed upon, and then be sent to the Goyoshí, or Government office, where the

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money is to be paid to Japanese officers, and the articles delivered by them.

ART. 10TH:—The shooting of birds and animals is generally forbidden in Japan, and this law is therefore to be observed by all Americans.

ART. 11TH:—It is hereby agreed that five Japanese Ri, or miles, be the limit allowed to Americans at Hakodadi, and the requirements contained in Article 1st, of these Regulations are hereby made also applicable to that port within that distance.

ART. 12TH:—His Majesty, the Emperor of Japan, is at liberty to appoint whoever he pleases, to receive the ratification of the Treaty of Kanagawa, and give an acknowledgement on his part.

It is agreed that nothing herein contained, shall in any way affect or modify the stipulations of the Treaty of Kanagawa, should that be found to be contrary to these Regulations.

In Witness whereof, copies of these Additional Regulations have been signed and sealed in the English and Japanese languages by the respective parties, and a certified translation in the Dutch language, and exchanged by the Commissioners of the United States and Japan.

Simoda, Japan, June 17th, 1854.

(*Signed*) M. C. PERRY,
Commander-in-chief of the U.S. Naval Forces in the East India, China, and Japan seas; and Special Envoy to Japan.

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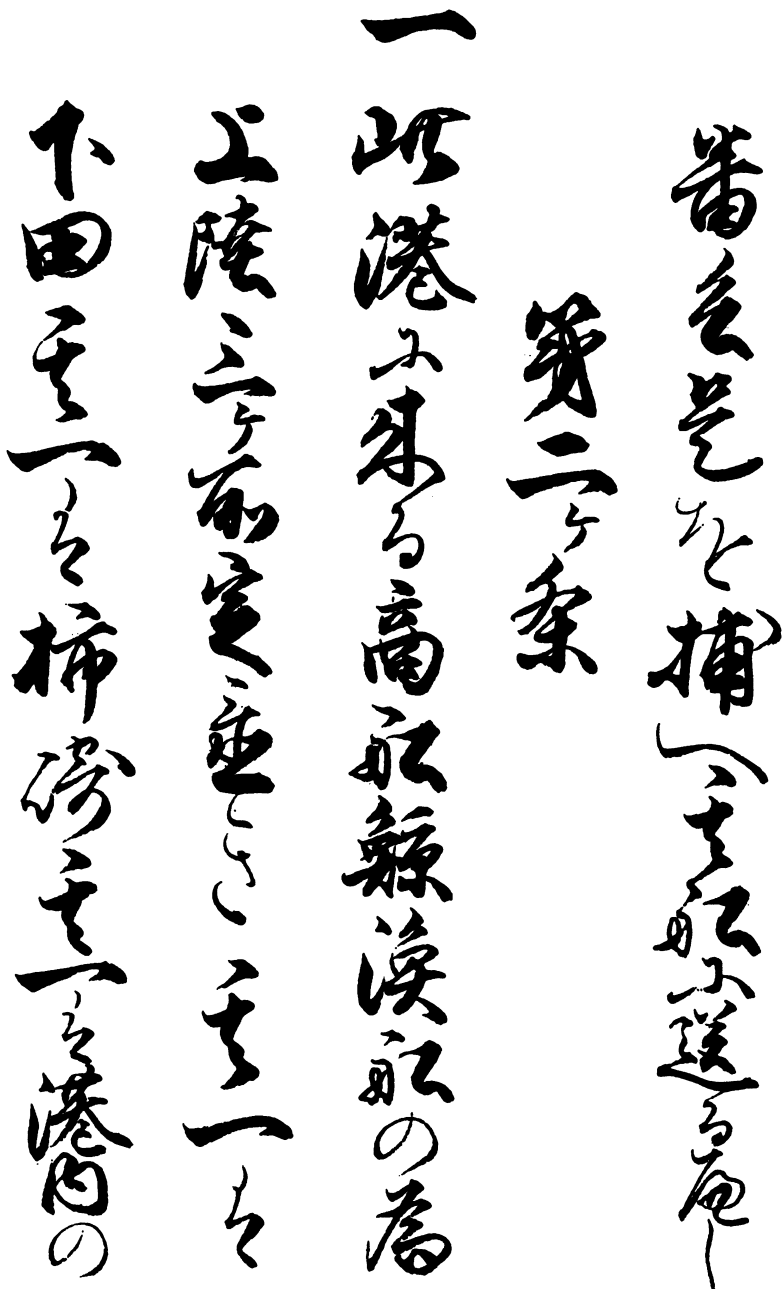
日本國に合衆國よりの使節
提督ヘルリと帝國日本の全權
林大学臣井戸對馬守伊澤
美作守都筑豫河守鵜殿
民部少輔行内清右衛門松崎

海を帝國政府の爲要務並
條約附錄

第一ヶ條

一 下田鎮臺支配所の境を
定めんが爲関所を設ける

其意の得んゆる事し能はさ
亜墨利加人も亦既に絶せし
日本里数七里の境関所出入
さらに隙ある事なし但
日本法度に悖る者あらハ



中央にある小嶋は東南に
南る澤邊に設く置し
合流國の人民必日本官吏に
對し叮嚀をとる置し

第二ヶ条

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一 上陸の亜墨利加人先行を
請まして武家町家より
一切立ち寄ふ事ならば但寺院
市店見物を勝手たる事し

第四ヶ条

一 徘徊の者休息所を追而
手為旅店設ろまて下田
可仙寺柿崎玉泉寺二等を
定置く事し

第五ヶ条

一 柿伝玉家寺境内ニ無量梨
埋蕣不を設け麁略ある事
なし

第六ヶ条

一 神宗門にての條約ニ箱館ニ

おいて石炭を沿面こさと
あまと其地にて渡し難き
趣は提督ペルリ兼諾いあし
箱館にて石炭用意より
及てさるは其政府に告面し

第七ヶ条

一向後当國政府ふおいてく
公顕の示告ふ蘭語譯司
居合さる時のみを漢文譯書
を取用ふる事なし

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第八ヶ条

一 港取締役者人港内業内者
三人定置く事し

第九ヶ条

一 市店の事を撰むに買ひの

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名と不ハ價とを記し御用ニ
送り其價を同ぶりて日本
官吏ハ毎し不ハ官吏より
渡せ候し

第十ヶ条

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一 鳥獸遊獵を勝て日本より
おいて禁せる事なれハ
亜墨利加人も亦此制度に
伏せ候し

第十一ヶ条

一

此度箱館の境日本里数
五里を定めさき地をその
他法は此條約第一ヶ条より
記して事の規則に倣ふ事し

第十二ヶ条

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一神奈川ゆきの條約取扱れ
書籍を芸誠し是に芸しふる
ゆゑ日本君主に於て誰に
委任あることも意の得ぬる事し

第十二ヶ条

一 茲に取極めて家の規定を
行事に依らば若神奈川
にての條約に遵ふ事あるとも
又是を変る事なし
右條約附録エケレス語日本語に

取認め名判致し是を蘭語に
翻譯して其書面合流國と
日本全權雙方取替さるの也

REGULATIONS RESPECTING PILOTS, AND THE SUPPLYING OF AMERICAN VESSELS ENTERING THE PORT OF SIMODA.

A lookout place shall be established at some convenient point, from which vessels appearing in the offing can be seen and reported, and when one is discovered, making apparently for the harbor, a boat shall be sent to her with a pilot.

And in order to carry this regulation into full effect, boats of suitable size and quality, shall always be kept in readiness by the harbor master, which, if necessary, shall proceed beyond Rock island, to ascertain whether the vessel in sight intends entering the harbor or not. If it may be the desire of the master of said vessel to enter port, the pilot shall conduct her to safe anchorage, and during her stay, shall render every assistance in his power, in facilitating the procurement of all the supplies she may require.

The rates of pilotage, shall be; for vessels drawing over 18 American feet, fifteen dollars; for all vessels drawing over 13, and less than 18 feet, ten dollars; and for all vessels under 13 feet, five dollars.

[Translation]

BEPALINGEN MET BETREKKING TOT LOODSEN, EN HET LEVEREN VAN BENODIGDHEDEN AAN AMERIKAANSCHE SCHEPEN IN DEN HAVEN VAN SIMODA.

Op eene daartoe geschikte plaats zal een uitkyk worden opgerigt van waar schepen in de nabyheid komende kunnen worden gezien, alsdan zal de overheid daarvan verwittigd, en een boot met een loods aan boord naar het schip afgezonden worden als hetzelve naar deze haven schynt te komen.

Ten einde deze bepaling ten volle uit te voeren zullen booten van genoegzame grootte altyd door den havenmeester in gereedheid worden gehouden, welke booten als zulks nodig mogt zyn zoover als Rots eiland (Mikomoto Sima) zullen gaan om te onderzoeken of het schip in gezigt al of niet in den haven zal komen. Als nu de schipper van zulk een schip den haven wil binnen loopen, zal de loods hetzelve naar eene veilige ankerplaats brengen, en gedurende deszelfs verblyf aldaar al het mogelyke aanwenden, om het verkrygen van wat hetzelve nodig mogt hebben, gemakkelyk te maken.

Het loon van den loods zal zyn voor schepen meer dan achttien Amerikaansche voeten diep in het water, vyftien dollars; voor schepen meer dan dertien en minder dan achttien voeten diep in het water, tien dollars; en vyf dollars

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These rates shall be paid in gold or silver coin, or its equivalent in goods, and the same shall be paid for piloting a vessel out, as well as into port.

When vessels anchor in the outer harbor, and do not enter the inner port, only half the above rates of compensation shall be paid to the pilot.

The prices for supplying water to American vessels at Simoda, shall be fourteen hundred cash, per boat load, (the casks being furnished by the vessel.) And for wood delivered on board, about seven thousand, two hundred cash, per cube of five American feet.

SILAS BENT,
Flag Lieutenant.

(*Signed,*)
KURA-KAWA-KAHEI,
Lieutenant Governor.
Approved,
M. C. PERRY,
Commander-in-chief of the U.S. Naval forces in the East India, China, and Japan seas.

voor schepen minder dan dertien Amerikaansche voeten diep in het water.

Dit loon zal betaald worden in gouden of zilveren munt, of met eene gelyke waarde in goederen en evenveel zal betaald worden voor het uitloodsen, als voor het naar binnen loodsen.

Als schepen niet in den binnen haven komen, doch in den buiten haven ten anker gaan, zal alleen de helft van de hierboven vastgestelde loonen worden betaald.

Amerikaansche schepen in den haven van Simoda, zullen kunnen verkrygen water aan boord tegen veertien honderd pitjes (cash) voor een volgeladen boot, (de watervaten door het schip geleend wordende) en brandhout aan boord geleverd voor ongeveer zeven duizend twee honderd pitjes per kubiek iki, of kubiek van vyf Amerikaansche voeten.

SILAS BENT,
Luitenant Adjudant.

KURAKAWA KAHEI,
Luitenant Gouverneur.
Goedgekeurd
M. C. PERRY,
Opperbevelhebber van de Oorlogsmagt van de Vereenigde Staten in de zeeen van Oost Indie, China, en Japan.

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U.S. STEAM FRIGATE MISSISSIPPI,
Simoda, Japan,
June 23d, 1854.

THIS IS TO CERTIFY

That Yohatsi, Hikoyemon and Dshirobe, have been appointed Pilots for American vessels entering or departing from the port of Simoda, and,

That the following rates for pilotage have been established by the proper authorities, viz:—

For vessels drawing over eighteen American feet, $15,00.
For vessels drawing over thirteen and less than eighteen feet, $10,00.
For vessels drawing under thirteen feet, $5,00.

These rates shall be paid in gold or silver coin, or its equivalent in goods; and the same shall be paid for piloting vessels out, as well as into port.

When vessels anchor in the outer roads and do not enter the inner harbor, only half the above rates of compensation shall be paid to the pilots.

By order of the Commander-in-chief,

SILAS BENT,
Flag Lieutenant.

Eene ware vertaling,
A. L. C. PORTMAN.

V.S. STOOM FREGAT MISSISSIPPI,
Simoda, Japan
den 23sten Juny, 1854.

[Translation]

Dit dient om te verklaren, dat Yohatsi, Hikoyemon, en Dsirobe benoemd zyn als loodsen voor schepen van de Vereenigde Staten de haven van Simoda binnenkomende, of uitgaande; en dat het loon voor de loodsen door de bevoegde overheid is vastgesteld geworden als volgt:

Voor schepen over 18 Amerikaansche voeten diep in het water, $15,00.
Voor schepen over 13 en minder dan 18 voeten diep, $10,00.
Voor schepen onder 13 Am: voeten diep, $5,00

Dit loon zal betaald worden in gouden of zilveren munt of met eene gelyke waarde in goederen; en hetzelfde zal betaald worden voor het binnen komen als wel als voor het uitgaan.

Als schepen in den buitenhaven ankeren en niet naar binnen gaan, zal alleen de helft van de hierboven vastgesetde loonen worden betaald.

Op last van den Opperbevelhebber,

SILAS BENT,
Luitenant Adjutant.

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Approved,
M. C. PERRY,
Commander-in-chief of the U.S. Naval Forces in the East India, China, and Japan seas.

U.S. STEAM FRIGATE MISSISSIPPI,
Simoda, Island of Nippon, Japan,
June 22d, 1854.

Goedgekeurd
M. C. PERRY,
Opperbevelhebber van de Oorlogsmagt van de Vereenigde Staten in de zeeen van Oost Indie China, en Japan.

Eene ware vertaling,
A. L. C. PORTMAN.

V.S. STOOM FREGAT MISSISSIPPI,
Simoda, Japan
den 22sten Juny, 1854.

NOTES

This famous treaty was negotiated by Commodore Matthew Calbraith Perry, U.S.N., during his celebrated mission to the Far East in 1853–54. It is now very generally and appropriately known as Perry's Treaty; when made, it was usually referred to as the Treaty of Kanagawa, but occasionally as the Treaty of Yokohama (or "Yokuhama", as sometimes then written).

For convenience of reference there is here inserted a summary calendar of the itinerary of Commodore Perry during his mission, prepared from the original log books of the flagships, now in The National Archives. In a few instances the dates here given differ from those mentioned in Perry's published Narrative, cited below.

ITINERARY OF COMMODORE PERRY

Flagship "Mississippi", Commander Sidney Smith Lee

1852, November 24	Left Norfolk.
December 12	Arrived at Funchal, Madeira.
December 15	Left Funchal.
1853, January 10	Arrived at Jamestown, St. Helena.
January 11	Left Jamestown.
January 24	Arrived at Capetown, South Africa.
February 3	Left Capetown.
February 18	Arrived at Port Louis, Mauritius.
February 25	Left Port Louis.
March 11	Arrived at Point de Galle, Ceylon.
March 15	Left Point de Galle.
March 25	Arrived at Singapore.
March 29	Left Singapore.
April 7	Arrived at Hong Kong.
April 7–27	At Hong Kong and vicinity.
April 27	Left Hong Kong.
May 4	Arrived at Shanghai.
May 9	The broad pennant transferred to the *Susquehanna*.

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Flagship "Susquehanna", Commander Franklin Buchanan

1853, May 17	Left Shanghai.
May 23	Left the mouth of the Yangtze Kiang.
May 26	Arrived at Naha, Loochoo (first visit).
June 9	Left Naha.
June 14	Arrived at Port Lloyd, Bonin Islands.
June 18	Left Port Lloyd.
June 23	Arrived at Naha (second visit).
July 2	Left Naha.
July 8	Arrived in Yedo Bay (first visit).
July 17	Left Yedo Bay.
July 25	Arrived at Naha (third visit).
August 1	Left Naha.
August 7	Arrived at Hong Kong.
August 7–January 14, 1854	At Hong Kong and vicinity. (From September 29 to December 18 the *Mississippi* bore the broad pennant.)
1854, January 14	Left Hong Kong.
January 21	Arrived at Naha (fourth visit).
February 7	Left Naha.
February 13	Arrived in Yedo Bay (second visit).
February 18	The broad pennant transferred to the *Powhatan*.

Flagship "Powhatan", Captain William J. McCluney

1854, April 18	Left Yedo Bay; arrived at Shimoda (first visit).
May 13	Left Shimoda.
May 17	Arrived at Hakodate.
June 3	Left Hakodate.
June 7	Arrived at Shimoda (second visit).
June 19	The broad pennant transferred to the *Mississippi*.

Flagship "Mississippi", Commander Sidney Smith Lee

1854, June 25	Left Shimoda.
July 1	Arrived at Naha (fifth visit).
July 17	Left Naha.
July 22	Arrived at Hong Kong.
July 22–September 11	At Hong Kong and vicinity.
September 11[1]	Commodore Perry left Hong Kong in the British mail steamer *Ganges* on his way home via the "overland route".
1855, January 11	Commodore Perry arrived at New York in the U.S. mail steamer *Baltic*.[2]

The instructions to Commodore Perry from the Secretary of the Navy are recorded in two volumes in the archives of the Navy Department (Naval Records and Library, Confidential Letters, No. 2, March 1, 1849–February 28, 1853, and No. 3, February 1, 1853–October 17, 1857). Such of those instructions as are quoted in these

[1] On September 12 the *Mississippi* left Hong Kong; from September 21 to October 1 that vessel, with the *Susquehanna* and the *Southampton*, was at Shimoda; on October 1 the *Mississippi* departed for the United States by way of Honolulu, San Francisco, Taboga, Valparaiso, the Strait of Magellan, and Rio de Janeiro, arriving at the Brooklyn Navy Yard on April 22, 1855. The following afternoon Commodore Perry visited the ship, and when he left the broad pennant was hauled down (National Archives, Log Books, U.S.S. *Mississippi*).

[2] New York Herald, January 12, 1855, p. 1.

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editorial notes have been collated with the record copies, with citation only of a printed text, when available, as it is in most cases.

The despatches of Commodore Perry to the Secretary of the Navy during the course of his mission are contained in two volumes in the archives of the Navy Department (Naval Records and Library, East India, China, and Japan Squadron, Commodore M. C. Perry, vol. 1, December 13, 1852–December 31, 1853, and vol. 2, January 2, 1854–May 16, 1855). Those of the despatches that are here relevant are mostly printed in Senate Executive Document No. 34, 33d Congress, 2d session (serial 751), which is hereinafter generally cited as "serial 751"; such of the despatches as are quoted in these editorial notes have been collated with the originals, with citation only of a printed text, when available. The numbering of the despatches is extremely confused; many despatches are without number; there are duplications of numbers and "A" numbers; certain numbers are not in their chronological order; and there is a gap in the numbering from No. 45 to No. 49, inclusive.

Commodore Perry's report of his mission is printed in Senate Executive Document No. 79, 33d Congress, 2d session (serials 769–71), a work of three volumes.[1] According to the title page, the first volume was compiled by Francis L. Hawks, D.D., LL.D.; the first two volumes are entitled "Narrative of the Expedition of an American Squadron to the China Seas and Japan, Performed in the Years 1852, 1853, and 1854, under the Command of Commodore M. C. Perry, United States Navy . . ."; and the third volume is entitled "United States Japan Expedition. Observations on the Zodiacal Light, from April 2, 1853, to April 22, 1855 . . . by Rev. George Jones, A.M., Chaplain United States Navy". From page 1 of the first volume it appears that the manuscript of the report was transmitted to the Secretary of the Navy by Commodore Perry on August 27, 1855, and by the Secretary of the Navy, James C. Dobbin, to the Secretary of the Senate on the following day. But it is to be noted that papers of a later date than the transmittal of the report are included in the publication (e.g., the letter of January 8, 1856, in vol. 1, pp. 482–83, and the letter of July 16, 1856, in vol. 2, p. 408), and the prefatory note to volume 2 is dated June 10, 1857. The work is hereinafter cited as "Narrative".[2]

An important first-hand account of the mission of Commodore Perry is the journal of Samuel Wells Williams, who ranked as Chief Interpreter ("A Journal of the Perry Expedition to Japan", printed in 37 Transactions of the Asiatic Society of Japan, pt. 2, pp. i–ix, 1–259; the work is hereinafter cited as "Williams"). The journal of Dr. Williams is the more important because it was not made available to Commodore Perry or to the compiler of the Narrative (see Williams,

[1] Also printed as House Executive Document No. 97, of the same Congress and session (serials 802–4), with the same pagination.

[2] It is said by the biographer of Commodore Perry (Griffis, Matthew Calbraith Perry, 385; see also pp. 379, 384) that Dr. Francis L. Hawks "wrote the preface, added a few footnotes and here and there a sentence, and Dr. Robert Tomes prepared the introduction, but the narrative [volume 1] was of Perry's own writing"; but compare the prefatory note in Narrative, I, iii–vi.

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vi). The Asiatic Society of Japan has been good enough to permit the extensive quotations from that journal which appear in these editorial notes and in those to Document 166, the compact with Loochoo of July 11, 1854.

Treaties between Japan and other powers which followed Perry's Treaty and preceded the treaties of 1858 were those with Great Britain, signed at Nagasaki October 14, 1854, with "exposition" of October 18, 1855 (English version in 44 British and Foreign State Papers, 62–66; see also 46 *ibid.*, 708–29); with Russia, signed at Shimoda February 7, 1855, with explanatory articles of the same date (French version in 57 *ibid.*, 1054–57), and supplementary treaty signed at Nagasaki October 24, 1857 (English translation in *ibid.*, 1057–61); with the Netherlands, preliminary convention signed at Nagasaki November 9, 1855, superseding treaty signed at Nagasaki January 30, 1856, and additional articles and supplements thereto signed at Nagasaki October 16, 1857 (English translations in 47 *ibid.*, 1087–1102); and with the United States, convention signed at Shimoda June 17, 1857 (11 Statutes at Large, 723–24).

In considering treaty relations between the United States and Japan during the four decades beginning with 1854, the provisions of all treaties between Japan and third states are of relevance, because of the most-favored-nation clause of Article 9 of Perry's Treaty.

The Texts

Four wordings of the treaty follow the headnote: (1) the English version, the original of which is a manuscript of seven written pages; (2) the Japanese version, which is reproduced in reduced facsimile page for page from the original but in left-to-right order of pagination; (3) the certified Chinese translation delivered by the Japanese Plenipotentiaries, which is reproduced in reduced facsimile page for page from the manuscript but in left-to-right order of pagination; and (4) the certified Netherlandish translation delivered by the Japanese Plenipotentiaries, from the manuscript of four written pages.

The source papers for the four wordings of the treaty above printed are in the treaty file. The manuscript of the original English version, consisting of four 8-by-13½-inch sheets of paper, is now bound between the duplicate United States instrument of ratification and the original proclamation. Differing in physical form from the English version, and quite similar to one another, are the other three source papers. The manuscript of the original Japanese version consists of eighteen pages; that of the certified Chinese translation, fourteen pages; and that of the certified Netherlandish translation, eight pages.[1] Each

[1] Assuming the eight pages of this certified translation to be numbered from 1 to 8 in left-to-right order, on page 1, which forms the front cover of the manuscript, are written the words "Ware Vertaling van het Verdrag" (True Translation of the Treaty); page 2, the inside front cover, is blank; the text of the translation, preceded by the headings "Ware Vertaling" and "Verdrag", begins on page 3 and ends on page 6; page 7, the inside back cover, is blank; and page 8, the back cover, is blank except for the penciled endorsement, "Treaty of Kanagawa in Dutch Japanese translation". Stamped over the binding ribbon on pages 1 and 8 is an impression of the same seal as that affixed at the right of the signature of the translator, Moriyama Einosuke, on page 6.

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leaf of those manuscripts is a sheet of paper measuring approximately 22 by 16 inches which is folded double, with the fold at the outer edge and the trim at the inner or binding edge; thus each leaf, measuring 11 by 16 inches, consists of two thicknesses of paper. The leaves are bound together with paper cords or ribbons run through holes cut near the inner edge of the leaves.

A full-scale facsimile of the "Chart" mentioned in Article 5 of the treaty as "accompanying" and "hereto appended", the original of which is in the treaty file, is in a pocket inside the back cover of this volume.

Following the Netherlandish translation of the treaty is printed the text of the Additional Regulations signed at Shimoda June 17, 1854, in English and Japanese. No signed original of the Additional Regulations is available; for the English version thereof the source is enclosure A to Commodore Perry's despatch No. 52, dated at sea July 18, 1854 (Naval Records and Library, volume 2 of those above cited); that enclosure is a print headed "Japan Expedition Press. U.S. Steam Frigate Mississippi, at sea, July 21st, 1854." The Japanese version of the Additional Regulations is included in the Japanese instrument of ratification thereof and is reproduced above in reduced facsimile page for page from that instrument but in left-to-right order of pagination. The certified Netherlandish translation of the Additional Regulations is not available in any form, as no example thereof has been found.

Next after the Additional Regulations are printed the English texts and Netherlandish translations of two papers subsidiary to the Additional Regulations and implementing Article 8 thereof. These are (1) Regulations Respecting Pilots and the Supplying of American Vessels Entering the Port of Shimoda, signed at Shimoda June 23, 1854, and (2) Certificate of Appointment of Pilots and Rates for Pilotage at Shimoda, signed at Shimoda June 22, 1854. The sources for the two papers last mentioned are respectively enclosures D and E to the despatch of Commodore Perry last cited; those enclosures are also prints, with headings similar to the print of enclosure A, but dated (enclosure D) "June 28th, 1854" and (enclosure E) "June 27th, 1854".

Other File Papers

The papers in the treaty file include the attested resolution of the Senate of July 15, 1854, in simple form (see Executive Journal, IX, 357); the duplicate United States instrument of ratification of August 7, 1854, in customary form; the certificate of the exchange of ratifications at Shimoda on February 21, 1855, reproduced below in reduced facsimile; the original proclamation of June 22, 1855, printed below; and the Japanese instruments of ratification of the treaty and the Additional Regulations, both of which are described below.

The three remaining papers in the treaty file are: (1) a Chinese translation of the treaty, certified by Samuel Wells Williams, American interpreter, without date, which is presumably identical with the

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similarly certified translation delivered to the Japanese Plenipotentiaries; (2) a Netherlandish translation of the treaty, certified by Anton L. C. Portman, American interpreter, without date, which is presumably identical with the similarly certified translation delivered to the Japanese Plenipotentiaries; and (3) the full power to exchange the ratifications issued to Ido Tsushima-no-kami, one of the four Japanese Plenipotentiaries who signed the treaty.

The Japanese Instrument of Ratification of the Treaty

The Japanese instrument of ratification of the treaty is a manuscript of twenty-four pages, bound in cloth-covered cardboard covers, and is thus of a much more elegant appearance than the paper-covered original of the Japanese version.

Miss Shio Sakanishi, of the Division of Orientalia, Library of Congress, has been good enough to examine the Japanese instrument of ratification, along with the signed original of the Japanese version of the treaty, and to make these comments thereon.

The instrument of ratification includes the Japanese version of the treaty text, except for the dating clause and the signatures (the last five lines of the original).

Textually the original Japanese version of the treaty and that written in the ratification are identical in all essentials, although differing slightly in writing style, including the use or non-use in one document or the other of certain characters which do not affect the meaning. One trivial variance which was noted occurs on page 2, line 1, of the ratification, after the thirteenth character, where two ideographs signifying "proper name" (following the Japanese for "Matthew Calbraith Perry") are omitted.

The ratifying clauses of the Japanese instrument of ratification of the treaty read thus in translation:

> The foregoing twelve articles of the treaty were signed by the Japanese Commissioners, Hayashi, Rector of the University; Ido, Lord of Tsushima; Izawa, Lord of Mimasaku; and Udono, member of the Department of Home Affairs; and by the American Commissioner, Matthew Calbraith Perry, in the 7th year of Kaei, Elder Brother, Tiger, 3d month, 3d day, in the village of Yokohama, Bushu Province; and there is no error in the above-stated fact. The treaty ratified at this time at the port of Shimoda, Zushu Province, is in the complete charge of Ido, Lord of Tsushima. Henceforth the two nations above mentioned will faithfully observe the articles of the treaty.
>
> As to the Additional Regulations agreed upon at Shimoda, they will be appended in a separate paper.
>
> The above is by order of the Taikun.
>
> 1st year of Ansei, Elder Brother, Tiger, 12th month.[1]

Abe, Lord of Ise	(Signature)
Makino, Lord of Bizen	(Signature)
Matsudaira, Lord of Izumi	(Signature)
Matsudaira, Lord of Iga	(Signature)
Kuze, Lord of Yamato	(Signature)
Naito, Lord of Kii	(Signature)

[1] January 18 to February 16, 1855.

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The two provinces mentioned in the ratifying clauses are really Sagami (Bushu) and Izu (Zushu); but often in official documents they are given in a somewhat abbreviated form.

"Elder Brother, Tiger" refers to the Japanese and Chinese cycle of the signs of the zodiac. The old Japanese borrowed from Chinese astrology what are termed the *jikkan* or "ten celestial stems", a series obtained by dividing each of the five elements—wood, fire, earth, metal, and water—into two parts, the "elder" and the "younger" brother. This is combined with the twelve signs of the zodiac and allowed to run on together. Their combination produces the cycle of sixty years, as sixty is the first number divisible both by ten and by twelve.

The parenthesized word "signature" following the subscriptions of the six councilors (which were written by the scrivener) indicates here (and for other documents also) the sign at the end of each name in the original, which is an abbreviated signature and is called *kakihan*. There are no seals on the ratification.[1]

The Japanese Instrument of Ratification of the Additional Regulations

The Japanese instrument of ratification of the Additional Regulations of June 17, 1854, is a paper of twenty-three pages, similar in outward form to the instrument of ratification of the treaty. This document (from which the Japanese version of the Additional Regulations is reproduced above in reduced facsimile, page for page from the original but in left-to-right order of pagination) has been examined by Dr. Sakanishi, whose comments are now set forth.

In this instrument the testimonium clause of the included Japanese version of the Additional Regulations immediately precedes the clauses of ratification; the mentioned clauses read thus in translation:

> The foregoing Additional Regulations to the treaty are written in the English and Japanese languages and are signed by the Commissioners, and after they are translated into Dutch, they are ratified by the Commissioners of the United States of America and Japan.
>
> The foregoing Additional Regulations consisting of thirteen articles were signed by the Japanese Commissioners, Hayashi, Rector of the University; Ido, Lord of Tsushima; Izawa, Lord of Mimasaku; Tsuzuki, Lord of Suruga; Udono, member of the Department of Home Affairs; Seitaro Takeuchi; Mantaro Matsuzaki; and by the American Commissioner, Matthew Calbraith Perry, in the 7th year of Kaei, Elder Brother, Tiger, 5th month, 22d day, at the port of Shimoda, Zushu Province; and there is no error in the above-stated fact.

[1] Commander Henry A. Adams, U.S.N., who was entrusted with the mission to exchange the ratifications of the treaty, was informed when the exchange took place and believed (mistakenly) that the Japanese ratification was signed by the Shogun and that it bore the seal of that personage (see Narrative, II, 208, 209, quoted below).

On November 10, 1856, Townsend Harris learned from Russian officers visiting Shimoda that the Japanese ratification of Perry's Treaty "was *not signed* by the Ziogoon, or as we [call] him, the Emperor, but by the Chief of the Government" (Complete Journal of Townsend Harris, 263).

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The present ratification at Shimoda is in the complete charge of Ido, Lord of Tsushima. Henceforth the two signatory nations will faithfully observe the Additional Regulations to the treaty.

The above is by order of the Taikun.

1st year of Ansei, Elder Brother, Tiger, 12th month.

ABE, LORD OF ISE	(Signature)
MAKINO, LORD OF BIZEN	(Signature)
MATSUDAIRA, LORD OF IZUMI	(Signature)
MATSUDAIRA, LORD OF IGA	(Signature)
KUZE, LORD OF YAMATO	(Signature)
NAITO, LORD OF KII	(Signature)

It is to be noted that the ratification of the Additional Regulations refers to "thirteen articles", whereas the English version thereof contains only twelve. The second paragraph of Article 12 of the English version is numbered "Article 13" in the Japanese version incorporated in the Japanese instrument of ratification.

THE JAPANESE FULL POWER

The Japanese full power to exchange the ratifications is a manuscript of one page measuring about 35½ by 16 inches. The following translation thereof is by Dr. Sakanishi:

On this occasion of exchanging the ratifications between the United States of America and Japan at Shimoda, Ido, Lord of Tsushima, is appointed to have its full charge.

The above is by order of the Taikun.

1st year of Ansei, Tiger, 12th month.

ABE, LORD OF ISE	(Signature)
MAKINO, LORD OF BIZEN	(Signature)
MATSUDAIRA, LORD OF IZUMI	(Signature)
MATSUDAIRA, LORD OF IGA	(Signature)
KUZE, LORD OF YAMATO	(Signature)
NAITO, LORD OF KII	(Signature)

THE CHINESE TRANSLATION

As has been said, there are in the file two manuscripts of the Chinese translation of the treaty; one of these (reproduced above) is that delivered by the Japanese Plenipotentiaries; the other (of six written pages) is that certified by Samuel Wells Williams and is presumably identical with the similarly certified translation delivered to the Japanese Plenipotentiaries.

Dr. Arthur W. Hummel, Chief of the Division of Orientalia, Library of Congress, has been good enough to examine those two manuscripts and comment on their few variances. Almost all of these, Dr. Hummel finds, are trivial or inconsequential; some are alternative forms; in the Williams translation there are three or four superfluous words; the manuscript of Japanese origin, which is signed by Matsuzaki Michitaro, omits, in the dating clause, "Our Lord Jesus Christ"; the only difference which is of any interpretational import is in Article 11 and is described below in the words of Dr. Hummel (under the heading "Textual Questions").

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The undated certification by Dr. Williams of his translation[1] is written in English, thus:

Correct Translation from the English
S. Wells Williams
Chinese Interpreter to the Mission to Japan.

The Netherlandish Translation

The certified Netherlandish translation of the treaty which is printed above is from the manuscript delivered by the Japanese Plenipotentiaries. The other manuscript Netherlandish translation in the file, certified by the American interpreter and presumably identical with that delivered to the Japanese Plenipotentiaries, consists of two double sheets of paper, forming eight pages of 8-by-13½-inch size, bound together with red ribbons run through holes cut near the folded edges. Assuming the pages to be numbered from 1 to 8 in left-to-right order, the text of the translation begins on page 1, without the headings of the translation delivered by the Japanese Plenipotentiaries, and ends on page 6 with the certification, "(a correct translation) A L C Portman. Act^{s} Dutch Interpreter & Commodore's Clerk"; page 7 is blank; and page 8 is blank except for the pen-written endorsement, "Dutch Translation of a treaty. United States & Japan. March 31. 1854."

Textually the two manuscripts are essentially alike; there are variances of spelling, capitalization, writing style, etc.; comparison of the punctuation discloses nothing more material than the fact that the American interpreter was more fond of commas than his Japanese colleague; seven differences in the wording of the preamble and articles have been counted, but they are too minor to enumerate, the most noticeable (in Article 5) being "(Ri) in alle rigtingen" for "(Li) in het rond".[2] In the American manuscript the conclusion, after "Kanagawa" and before the certification, is of this tenor:[3]

den een en dertigsten Maart in het jaar onzes Heeren Jesus Christus achttien hondert (1800) vier en vyftig, en Kaei Sitsinen Sangoeats (Japansche tydrekening)
(Geteekend) M C Perry.

The Place of Signature

The treaty was signed in a building erected by the Japanese authorities for the purpose of the negotiations; it stood contiguous to the then northern limits of Yokohama, which at the time was no more

[1] It may be presumed that this translation was made by Dr. Williams from the copy of the English version of the treaty which is printed in his journal, without the signature of Commodore Perry (Williams, 154–57); apart from punctuation, etc., the text there differs slightly from the signed original in wording (preamble, Articles 5, 7, 12, and final clause); but the variances are too minor to be either relevant here or of significance otherwise.

[2] I.e., "in all directions" for "round about".

[3] Translation: the thirty-first of March in the year of our Lord Jesus Christ eighteen hundred and fifty four, and Kaei Sitsinen Sangoeats (Japanese chronology).
(Signed) M. C. Perry

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than a small village.[1] The titular locus of signature, the town of Kanagawa, situate some three miles to the north of the "treaty house", was the residence of the Japanese Commissioners during the negotiations. The geography of the region as known to Commodore Perry at the time is shown on the chart entitled "Western Shore of the Bay of Yedo", one of the fourteen charts bound at the end of volume 2 of the Narrative and which, in the list preceding those charts, is No. 11 and called "Yedo Bay";[2] for accuracy and correct place names, with that chart should be examined Hydrographic Office Chart No. 1291, "Tokyo Kaiwan". The following description is from Narrative, I, 343–44:

Along the western side of the Bay of Yedo, from its mouth, where it opens into the Gulf of Yedo, to the capital, there is almost a continuous range of towns and villages. The only breaks in this otherwise uninterrupted scene of populousness are the projecting spurs of the highlands, which, presenting less advantage for habitation, naturally prevent the erection of dwelling houses. These promontories, however, are covered with batteries, which are more formidable in aspect than in reality, for their guns are but of small calibre, and the defences slight in construction. Yoku-hama is one of these numerous and populous villages, and is situated at the head of a bay called on the American charts "Yoku-hama Bay," which is formed by Point Hope, on the southeast, and the neck of land extending northeast from Kanagawa to the suburb of the city of Yedo, termed Sinagawa, and near to which the junks resorting to the capital usually anchor. At the position in front of Yoku-hama there was just sufficient room to anchor in a line of battle the whole squadron; the guns of the several ships commanding an extent of shore equal to their entire range. It was in this position that the Commodore had placed his nine ships—the steam frigates, the Powhatan, which was the flag-ship, the Susquehanna, and the Mississippi, and the sailing ships, the Macedonian, the Vandalia, the Saratoga, the Southampton, the Lexington, and the Supply, the latter having subsequently[3] joined the squadron.

Kanagawa is quite a large town, and was the residence of the Japanese commissioners pending the negotiations of the treaty, and it would have been selected by Commodore Perry for the place of conference, had it not been for the impossibility of the ships approaching within gunshot of its front towards the bay. He therefore preferred to select Yoku-hama, to confirm the choice of Captains Buchanan and Adams, who had been sent to examine and report upon the most eligible anchorage for the squadron.

The building erected for the accommodation of the Japanese commissioners and the Commodore, and the numerous persons in attendance, and which was called by the Americans the "treaty house," was placed upon a level plain near to the shore, and contiguous to the village of Yoku-hama, being distant from Kanagawa three, from the southern suburb of the capital five, and from Yedo itself probably nine miles. The treaty house had been hastily erected of unpainted pine wood, with peaked roofs, and covered a large extent of ground, having a reception hall of from forty to sixty feet in area, and several adjoining apartments and offices. From each side extended yellow canvas screens divided into panel-like squares by black painted stripes. On the exterior walls of the building was spread a dark cloth, upon which was represented in bright colors some device which was said to be the arms of the third commissioner, Izawa, prince of Mimasaki.

The following passages descriptive of the selection of the site and the erection of the buildings are from Williams, 115, 119–20, respectively of February 25 and March 2, 1854:

[1] For the later history of the site of the building, see Griffis, *op. cit.*, 357.
[2] Now Tokyo Bay.
[3] On March 19, 1854.

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A place was pointed out in shore where he [Kayama Yezaimon] supposed a good spot could be found, and it was decided to go immediately, it being now a quarter of three o'clock. Captain Buchanan went with Captain Adams in another boat, preceded by Yezaimon, and taking a southwest direction, we landed about five miles from the ships, sounding to ascertain the deepest water, at a hamlet below Kanagawa called Yokohama. The Commodore demands a locality which can be covered by the shipping. A vacant spot of ground was selected near the hamlet, now covered with a promising wheatfield, as suitable for the interview; it was coolly proposed before reaching this spot to demolish three or four houses in the village to make room for the new buildings necessary, Yezaimon seeming to think the property of the villagers of not the slightest consideration.

In the evening I accompanied Captain Adams on shore to see about the progress of the houses, arrange how to land the escort and get a walk if we could. There are five buildings, the materials being the same as those employed at Uraga which have been transported hither. They are to be shingled, and the floor matted; and several rooms like cloisters intimated their supposition that it would be necessary to remain in the buildings some days. They are cheap affairs and ought to revert to the unlucky owner of the despoiled wheatfield as a compensation for his crop. A flag was fluttering in front inscribed *Goyio*, 御用, to intimate that government had applied its power, and on the limits was another marker called *Go-yio chio*, 御用場, or Arena used for the Emperor.

The Chief of State

This treaty, on the part of Japan, was signed solely under the authority of the Shogun (Taikun or Tycoon) at Yedo (now Tokyo),[1] and without the sanction of the Mikado at Kyoto. It was for this reason that the legality of the treaty was questioned in Japan and that by some it was denounced "as treason" (see Nitobé, Intercourse between the United States and Japan, 28–30, 57–59). The ratification of the treaty by Japan was also the act of the Shogun (although the instrument was not signed by him); but before the exchange of ratifications copies of Perry's Treaty, the treaty with Great Britain of October 14, 1854 (see 44 British and Foreign State Papers, 62–66, and 46 *ibid.*, 708–29), and the treaty with Russia of February 7, 1855 (see 57 *ibid.*, 1054–57), had been laid before the Mikado, who, on February 13, 1855, caused his approval of the negotiations to be conveyed to the Shogun (Satow, "The Far East", in Cambridge Modern History, XI, 830; Gubbins, Progress of Japan, 100–101).

The period of the Shogunate began in the twelfth century and continued until 1867; during that period and until the Restoration of 1868, the ruling power and administration in Japan were (with two intervals, the later of which ended in 1603) possessed *de facto* by the Shogun; at the time of the mission of Commodore Perry the sovereignty of the Mikado was one of name (Gubbins, *op. cit.*, 11–22, 86).[2]

Perry had naturally accepted the statements in available works on Japan, and accordingly he erroneously considered that the form of government then existing in that country was a sort of duarchy,

[1] The name was changed from Yedo to Tokyo by September 15, 1868 (Foreign Relations, 1868, pt. 1, 820, 825).

[2] A translation of the article of September 7, 1615, defining the authority of the Shogun, is in Gubbins, *op. cit.*, 269; see also *ibid.*, 71–72.

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with a "temporal" Emperor (the Shogun) at Yedo, and an "ecclesiastical" Emperor (the Mikado) at Kyoto;[1] so when Perry drafted his treaty and wrote of the "August Sovereign of Japan" (preamble and Article 12), he was thinking of the Shogun at Yedo. Similarly, Commander Henry A. Adams at the time of the exchange of ratifications insisted that the Japanese ratification be signed by "the Emperor, or august sovereign" and accepted (as complying with his demand) an instrument which he thus (erroneously) described (see Narrative, II, 205–8):

> It bore the signature and seal of Tai-Koen [*Taikun*], in full, with a column of Japanese characters adjoining it, expressing, as was explained to me, his power and dignity. It bore also the seals and signatures of the six supreme councillors, in a lower place.

The Language Question

Among the personnel of those associated with Commodore Perry on his mission, only Dr. Samuel Wells Williams, a distinguished and well-known missionary at Canton and a learned sinologue, had studied Japanese;[2] some years earlier he had translated the Gospel of Matthew into that language (see Dictionary of American Biography, XX, 290–91). Williams, who ranked as Chief Interpreter, wrote modestly of his own attainments in Japanese (see Williams, 2, 6, 51, 63, 65, 123, 141–42, 203); his compensation was $300 a month (letter from the Treasury Department, August 9, 1855, in House Report No. 351, 36th Congress, 1st session, serial 1069; in the body of that report it is said that the salary was $500 a month). On June 27, 1855, Williams was appointed Interpreter and Secretary of Legation in China; and he held that post for more than twenty years.

The other American interpreter was Anton L. C. Portman, who rated as captain's clerk, with pay of $500 per annum. Portman was appointed by Commodore Perry on April 17, 1852, and served until the return of the *Mississippi* to the United States three years later; he was fluent in Netherlandish and also translated from French and German; his services were highly commended by Commodore Perry and four other naval officers of the expedition (*ibid.*). By the act of June 16, 1860, Portman received $3,000 as additional compensation (12 Statutes at Large, 861–62). Portman was appointed (from New York) Interpreter to the Legation in Japan on June 27, 1861 (D.S., 4 Credences, 337), and on April 25, 1871, received notice from the Department of State of the termination of his connection with the Legation (D.S., 17 Despatches, Japan, unnumbered, April 26, 1871);

[1] In the introduction to the Narrative (I, 11) is this statement: "Japan presents the singular feature of having *two* Emperors at the same time, the one secular, the other ecclesiastical".

[2] In his unprinted despatch No. 9, of April 27, 1853, from Macau, Commodore Perry wrote that since April 9 he had "visited Canton, and succeeded after some difficulty in securing the services as interpreters of Mr S Wells Williams, and a Chinese, both attached to the American Mission", and added that Williams was "said to understand more of the Japanese language than any other person in China".

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from April 28, 1865, to August 12, 1866, inclusive, he served as Chargé d'Affaires ad interim (6 *ibid.*, No. 20, April 28, 1865; 7 *ibid.*, No. 35, August 13, 1866).

There were Japanese officials with some knowledge of English.[1] During the second visit of Commodore Perry it is said that there "was a third interpreter from Nagasaki who spoke considerable English with a good accent" (Williams, 104, February 15, 1854). According to the Narrative (I, 340, March 3, 1854), one of the Japanese interpreters, Moriyama Einosuke,[2] "spoke a little English"; but this seems to be an understatement, for in the journal of Williams under the same date are these passages: "A new and superior interpreter came with Saboroske, named Moriyama Yenoske, who had recently returned from Nagasaki, whence he arrived in twenty-five days and hurried on at that. He speaks English well enough to render any other interpreter unnecessary, and this will assist our intercourse greatly" (Williams, 120).

Two intermediate languages[3] were used, Chinese and Netherlandish.[4] The Japanese had interpreters for each of the medial tongues; and some, perhaps all, of the Japanese Commissioners were fluent in Chinese (see Narrative, I, 383).[5]

It naturally resulted that the four languages were used when the papers of the treaty came to be written. The text of the treaty is written in two languages, English and Japanese; but certified translations in Chinese and Netherlandish were exchanged at the time of signing. A somewhat similar practice had been followed in 1833 in the case of the treaty with Siam (Document 76).

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[1] There is even authority to the effect that the Japanese "had a first-rate interpreter of English" named Nakahama Manjiro (see Griffis, *op. cit.*, 351, 366; Sakamaki, Japan and the United States, 1790–1853, 86).

[2] Moriyama Einosuke, who certified the Netherlandish translation of the treaty as Japanese interpreter, played an important part in the foreign intercourse of Japan (see Journal of Townsend Harris, 226, footnote 291).

[3] It is stated that a scroll of paper exhibited alongside the flagship of the American squadron on July 8, 1853, was written in French (see Narrative, I, 234; also Gubbins, *op. cit.*, 42).

[4] Netherlandish seems to have been the more employed during the negotiations (see, e.g., Narrative, I, 364–65, 368, 376, 377); and by Article 7 of the Additional Regulations of June 17, 1854 (printed above), it was provided that "henceforth the Chinese language shall not be employed in Official communications between the two Governments, except when there is no Dutch Interpreter".

[5] One misunderstanding of communications is recorded; this paragraph from the journal of Williams refers to the visit of Commodore Perry to Hakodate (May 17 to June 3, 1854) after the treaty was signed (Williams, 210, June 13, 1854):

> A letter was brought in, just received from Hakodadi via Yedo, inclosing some of our written conversations held there, and stating that Perry had declared that, if he could not have ten *ri* about Hakodadi as the limit, he would make the Japanese pay 10,000 cobans as damages. The matter was placed in its true relations, but I could understand enough to hear them charge Lo and me with misinterpreting on these matters, and making trouble.

Lo was the "teacher of good attainment" who was with Williams during the second visit to Japan (*ibid.*, 83) and whose story of the trip is printed in Narrative II, 395–406.

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For the supplementary papers the procedure was simpler. The Additional Regulations of June 17, 1854 (printed above), written in English and Japanese, were accompanied only with "a certified translation in the Dutch language"; Article 7 of those regulations provided that the Chinese language should not thereafter be used in official communications between the two Governments "except when there is no Dutch Interpreter". Of the still later regulations respecting pilots, "made in English and Dutch", there seems to have been no original in Japanese (see Narrative, I, 487–88).

The Signing

There are available two official accounts [1] of the signing of the treaty on March 31, 1854. These passages are from the "notes" (printed below) enclosed with Commodore Perry's despatch No. 43, of April 1, 1854:

an arrangement was agreed upon, and Friday the 31st fixed for the signing of the Treaty, which was accordingly done about noon,[2] and at the house erected especially for the conference, the Commissioners giving me three Copies of the Treaty in the Japanese language, duly signed by the four, especially delegated by the Emperor, and in return receiving from me three Copies in English with my Signature, translations in the Dutch and Chinese, Certified by the Dutch and Chinese Interpreters Messrs Portman and Williams for the United States, and being also exchanged for Japan.

It will be observed that the practice usually pursued in affixing Signatures to treaties was departed from on this occasion, and for reason assigned by the Japanese, that their laws forbade the Subjects of the Empire from putting their names to any document written in a foreign language.[3]

As I did not consider that this omission to sign the English version of the treaty could effect in the slightest degree the validity of the instrument, I made no very

[1] In Diary of an Official of the Bakufu, 115–16 (translated in 7 Transactions of the Asiatic Society of Japan, 2d series (1931), 98–119), all that is written about the signature in the entry for March 31 is: "Copies of the Treaty in Japanese, Chinese and Dutch were exchanged". In the record for the following day, pp. 116–17, it is said "that when copies of the treaty were exchanged yesterday, Perry signed and sealed the treaty before our eyes and asked that we should also sign and seal the treaty before his eyes. We replied that we did not do things in our country in this fashion and that we would sign and seal the treaty in the retiring room and not before him".

[2] In the log book of the *Powhatan*, March 31, 1854, it is recorded that at 12:30 p.m. six boats containing an escort of officers and marines pulled to the landing at Yokohama and that at 12:45 Commodore Perry and his suite left the ship for the meeting, returning between 4 and 6.

[3] Compare this paragraph from Diary of an Official of the Bakufu, 114–15 (March 30, 1854; the 2d, not, as printed, the "22nd", of the 3d month of the 7th year of Kaei):

> Hirayama Kenjiro and others were sent out to the warship and were shown a draft of the treaty. They were asked to agree to the placing of the Rector's and Tsushima-no-kami's seals on the same line with Perry's signature, as this would conform to the practice of all countries; but they replied that if this were the custom of foreign countries, Japan has its own customs, and that the seals should be affixed on different sheets and then exchanged. Despite repeated arguments, they said that unless it were done in accordance with Japanese law the treaty would not be entered into; and it was finally arranged that each party should sign and seal separate copies, which were to be exchanged, and that things should be done according to our law. The treaty will be exchanged at the meeting tomorrow.

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strenuous objections to the course they proposed and seemed determined on, more especially as they gave me triplicate copies of their version with certified translations, being well satisfied that all the stipulations as agreed to by them and in their own way, would be scrupulously carried out by their Government.

These two paragraphs are from Narrative, I, 377, 379–80:

Accordingly, on Friday, the 31st of March, 1854, the Commodore proceeded to the treaty house with his usual attendants, and immediately on his arrival signed three several drafts of the treaty written in the English language, and delivered them to the commissioners, together with three copies of the same in the Dutch and Chinese languages, certified by the interpreters, Messrs. Williams and Portman, for the United States. At the same time, the Japanese commissioners, in behalf of their government, handed to the Commodore three drafts of the treaty written respectively in the Japanese, Chinese, and Dutch languages, and signed by the four of their body especially delegated by the Emperor for that purpose. . . .

Immediately on the signing and exchange of the copies of the treaty, the Commodore presented the first commissioner, Prince Hayashi, with an American flag, remarking that he considered it the highest expression of national courtesy and friendship he could offer. The prince was evidently deeply impressed with this significant mark of amity, and returned his thanks for it with indications of great feeling. The Commodore then presented the other dignitaries with the various gifts he had especially reserved for them. All formal business being now concluded to the mutual satisfaction of both parties, the Japanese commissioners invited the Commodore and his officers to partake of an entertainment which had been particularly prepared for the occasion.

Neither of the foregoing accounts is as precise and complete as might be.[1] It is clear, however, that the English version of the treaty, signed by Commodore Perry only, was done in quadruplicate. Three of the signed originals of the English version were delivered to the Japanese Commissioners and a fourth was retained, which is now in the treaty file. It is said in the text that the respective Plenipotentiaries "have signed and sealed these presents"; but the instrument in the treaty file which has the signature of Commodore Perry is without seal; and in no account of the signing is there any mention of sealing.

There is also no doubt that the Japanese version was signed by the Japanese Commissioners in quadruplicate. Perry explicitly says that he received three "copies" in Japanese "duly signed by the four"; and a fourth "Japanese original" was produced at the exchange of ratifications (Narrative, II, 205, quoted below, p. 659).

Of the three originals of the Japanese version which were delivered to Commodore Perry, only one, as has been said, is in the treaty file; another is reproduced in facsimile in the Narrative (II, following p. 414). Miss Shio Sakanishi, of the Division of Orientalia, Library of Congress, who has been good enough to collate the two, found them identical except for immaterial differences in writing style.

In the excerpt quoted from the Narrative it is said that the Japanese Commissioners signed and delivered "three drafts of the treaty written respectively in the Japanese, Chinese, and Dutch languages"; but this is wrong; for if one takes it literally as written, the number of papers *delivered* by the Japanese Commissioners was only three,

[1] There is no mention in either of them of the chart of Article 5 of the treaty.

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one in each of the languages mentioned and all signed by them; certainly five papers were delivered to Commodore Perry; and the statement that the Japanese Commissioners signed writings in a language other than their own is erroneous; neither they nor Commodore Perry signed any of the translations.

A third account of the signing, written by a participant in the ceremony, is that of Dr. Williams, who has this entry in his journal for March 31, 1854 (Williams, 151–52):

> Last evening Kenzhiro came about eight o'clock with the Chinese version of the Treaty done from the Japanese, and, after some alterations and the correction of one important error respecting the distance allowed for rambling at Simoda, the whole was agreed upon. This morning a fair copy was made, and about a quarter of one o'clock the Commodore left the ship. On meeting the Japanese commissioners, they exhibited three copies of the Japanese version and one each of the Dutch and Chinese, while we had three copies of the English and one each of the Dutch and Chinese. They first opened theirs at the seals to show the rubrics attached to the name of each commissioner, instead of a seal, and then the Commodore signed the three English copies in their presence. The two copies of the Dutch version were then compared and found to be the same, when they were exchanged, one being signed by Yenoske, the other by Mr. Portman. After this, the Chinese copies were compared, and one character erased in one of them, but when I wished to sign their copy and date it a difficulty arose, for they wished only to date it in Kayei's name and year, while I required both theirs and ours, as in the Dutch. They declined to write the characters for "our Lord Jesus Christ," and the Commodore allowed the omission, after which they dated it, and Matsusake Michitaro signed it with his rubric; and I signed the other and gave it in exchange.

From the foregoing it appears that two certified translations, one in each of the two medial languages, were delivered on either part; and it is reasonable to assume that the Japanese retained, as did the Americans, one example of each of the translations delivered by them. If this be so, there were sixteen treaty papers of March 31, 1854 (besides the chart [1] of Article 5 and a supplementary letter [2] from Commodore Perry to the Japanese Commissioners). Five of the sixteen were delivered by Commodore Perry to the Japanese Commissioners, namely, three signed originals of the English version of the treaty, one Chinese translation certified by Dr. Williams, and one Netherlandish translation certified by Portman, an example of each of those three categories of papers being retained; similarly, five were delivered by the Japanese Commissioners to Commodore Perry, namely, three signed originals of the Japanese version of the treaty, one certified translation thereof into Chinese, and one certified translation thereof into Netherlandish, an example of each of the three groups being retained.

Of those sixteen treaty papers, there should be eight included among the papers in the treaty file, but only six are there; these are: one signed original of the English version; one signed original of the Japanese version; one Chinese translation certified by Dr. Williams; one Netherlandish translation certified by Portman; and two trans-

[1] There is nothing to show how many examples of the chart were made; surely there were two, and perhaps more.

[2] This letter, the text of which is not available, was dated March 30 or 31, 1854 (see below, pp. 630–31, 633).

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lations, respectively in Chinese and Netherlandish, certified by Japanese interpreters.

The Chart of Article 5

In Article 5 of the treaty there is mentioned an "accompanying Chart, hereto appended", whereon is marked a "small Island" in the harbor of Shimoda, that island being the central point wherefrom the limits of 7 Japanese miles (*ri*) extended, within which shipwrecked men and other American citizens were to be free "to go where they please". The original chart in the treaty file is entitled "Reconnoissance/of the/Harbor of Simoda,/Japan./made by order of/Commo. M. C. Perry,/Commander in chief U.S. Naval Forces E. India, China & Japan Seas", and is dated March 1854. The "small Island" is there called Centre Island; the arrow of the compass points marks true, not magnetic, north. A full-size facsimile of that chart (22¾ by 16¼ inches within the neat lines) will be found in a pocket inside the back cover of this volume.

The scale of the treaty chart is approximately 1:24,500. Comparison may profitably be made with Hydrographic Office Chart No. 2189, "Shimoda Ko". On the latter "Centre Island" is Inubashiri Shima; "Vandalia Bluff" of the treaty chart is Susari Saki; the latitude of Vandalia Bluff given on the treaty chart, 34°38′ north, is slightly more than one minute to the south of the correct latitude; and the longitude of that bluff or point on the treaty chart, 138°58′ east, should be approximately 138°57′30″ east.

The treaty chart was based on an examination of the harbor of Shimoda made during the visit there of the *Vandalia* and the *Southampton*, two vessels of Commodore Perry's squadron, from March 20 to 29, 1854 (see Narrative, I, 364, 376, 377). There were later surveys of the harbor made by direction of Commodore Perry when he arrived there on April 18, 1854 (see *ibid.*, 400, 415). From these were drawn the chart entitled "Simoda Harbor", one of the fourteen charts bound at the end of volume 2 of the Narrative and which, in the list preceding those charts, is numbered 13 and called "Harbor of Simoda".

In a note lettered on the treaty chart the equivalent of 7 Japanese miles is given as 10½ English miles. In one of the enclosures (printed below) to his despatch No. 43, of April 1, 1854, Commodore Perry wrote that 7 Japanese miles equal "about ten of ours"; but later he had more accurate information, for he wrote on July 18, 1854, that the equivalent was "about sixteen English" miles (despatch No. 52, cited below). In Narrative, I, 477, footnote, it is said that the *ri* or Japanese mile is equal to 2.453 English statute miles, which is approximately correct, as the Japanese *ri* (itinerary) measures 2.44 statute miles; accordingly, the distance of 7 Japanese miles in Article 5 of the treaty is slightly more than 17 statute miles.

The Datal Clause

In the final clause of the treaty the date of doing is given both as March 31, 1854, and as the 3d day of the 3d month of the 7th year of

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"Kayei" (Kaei), which is the name of a year-period, meaning "Felicitous Eternity".

Japanese chronology is a very complex and difficult subject; its mysteries are lucidly explained in the essay of William Bramsen, "Japanese Chronology and Calendars" (reprinted as the first part of "Japanese Chronology", by Ernest Wilson Clement, in 37 Transactions of the Asiatic Society of Japan, pt. 3, i–xvi, 1–303); the statements of the following paragraph are made on the authority of the learned treatise cited (see particularly pp. 1–5, 11, 17–18, 124–25).

One of the four methods[1] of counting years in Japan is by year-periods (*nengo*).[2] Each period has a distinctive name, as, for example, Tempo ("Heavenly Protection"); and the years of the period are serially numbered from 1 up; but as the *nengo* changes on the happening of some notable event, the periods are not of uniform length; some have lasted only one year and others more than twenty. The months of the calendar are lunar, beginning with the new moon; so in order to correlate the system with the solar year there are intercalary months approximately in four of every eleven years; and, by reason of the intercalation, the date of the civil New Year, which by the sun would fall on February 4, may be as early as January 21 or as late as February 19 according to the Gregorian calendar. Moreover, the change in the style of the *nengo* may take place on any day of the year; and when such a change is made, say in the 10th month, the new year-period is deemed to begin with the New Year's day of the year then current. One result of this is that by the *nengo* a date in the earlier part of that particular year would, before the change, have been called, say, the 1st day of the 2d month of one *nengo*, but would later be referred to as the same day of the same month of another *nengo*. The date of this treaty is an example. March 31, 1854, was then the 3d day of the 3d month of the 7th year of Kaei; but before the year ended the *nengo* was changed to Ansei; and thereafter March 31, 1854, is, by the *nengo*, the 3d day of the 3d month of the 1st year of Ansei (meaning "Peaceful Government"); so in the Japanese instrument of ratification of the treaty the year which began on January 29, 1854, and ended on February 16, 1855, is mentioned once as the 7th year of Kaei and once as the 1st year of Ansei.

For the alteration of the *nengo* in 1867 and the adoption of the Gregorian calendar by the Japanese Government in 1872, see *ibid.*, 5, 25, 126–27.

The complexities of the Japanese calendar were not understood at the time by the Americans. In China the periods of the *nengo* were those of the reigns of the Emperors; this was well known to Dr. Williams; hence he supposed, erroneously, that the same system prevailed in Japan and that the "monarch" with whose reign the *nengo*

[1] The other three are: by the reigns of the Emperors, by the sexagenary cycle, and by a continuous era commencing with the first year of the reign of Jimmu Tenno.

[2] Dr. Sakanishi writes: "Originally the word *nengo* came from the Chinese and has the same meaning; literally it should be translated as 'name of an era' or 'era name'."

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should coincide was the Shogun; so in his journal for February 16, 1854, is this entry (Williams, 105):

> They [Japanese officials] told me to-day that the siogoun [*Shogun*] had died in the tenth month of last year,[1] but that the nengo of Kayei was still continued and this was its seventh year, although a new incumbent had the seat. Such a mode of reckoning must throw history and chronology into some confusion; and it shows too the duplicity of the people, for no other adequate cause for such a step can be assigned than to deceive by confirming the impression that the same monarch still reigns. A day or two ago one of our visitors told me that the Mikado had resigned, but I did not ask him then whether the siogoun was dead, supposing from the nengo being the same that he had not died, as we heard reported.

Textual Questions

In the English version of the treaty Article 7 reads thus:

> It is agreed that Ships of the United States resorting to the ports open to them, shall be permitted to exchange gold and Silver Coin and articles of goods for other articles of goods, under such regulations as shall be temporarily established by the Japanese Government for that purpose. It is stipulated however that the Ships of the United States shall be permitted to carry away whatever articles they are unwilling to exchange.

In an instruction to Townsend Harris, who was appointed Consul General to Japan on August 4, 1855, Secretary of State Marcy mentioned a report made by Lieutenant John Rodgers, U.S.N., to the effect that "in the copies" of the treaty "in circulation in Japan" there were included in Article 7 the words "such as may be necessary for them" following "other articles of goods"; and Harris was directed to "lose no time in endeavoring to ascertain the correctness" of that information (D.S., 1 Instructions, Japan, 9–15, October 4, 1855; quoted in full in the editorial notes to the convention of June 17, 1857).

In his journal Harris, referring to the cited instruction, writes (Complete Journal of Townsend Harris, 328): "I was informed by the Department that these words ["such as may be necessary for them"] were not contained in the English, Dutch or Chinese versions of the Treaty, and I was directed to inquire into the matter and see if they were actually inserted in the Japanese version". This seems to be a too extensive interpretation of the instruction, which contains no express mention of any particular version of the treaty; and while it may well be that, upon receipt at Washington of the despatches of Lieutenant Rodgers, the Netherlandish translation of Article 7 (which is closely equivalent to the English) had been scrutinized, there is no reason to suppose that in 1855 the Department of State had obtained a critical rendering of the Chinese translation.

It appears that Harris did not take with him the wording of Perry's Treaty in any language but English; he requested and received (on June 2, 1857) from Japanese officials originals or copies of the two manuscript Netherlandish translations of the treaty which they had (*ibid.*, 368–69); and he must have found that Article 7 was written alike in those two papers, to the same effect as the English.

[1] This would be in November 1853; but the Shogun Iyeyoshi died July 26, 1853.

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Neither Harris nor his interpreter, Henry C. J. Heusken, could read Japanese. Harris made inquiry (on February 25, 1857) regarding the Japanese version of Article 7 and was told by the Governors of Shimoda that the words "such as may be necessary for them" were not therein contained (*ibid.*, 328–29); on April 21, 1857, he wrote (or intended to write) a "formal letter" asking for the Japanese version of Article 7 (see *ibid.*, 348–49); but so far as appears from the Townsend Harris papers, the note written by Harris on that date and to which an answer was received on May 1 (neither of those notes is available) related only to the affair of Reed and Dougherty (see *ibid.*, 354–55, and footnote 428, and the reply of Harris of June 3, 1857, there cited).

On the day after the signature of the convention of June 17, 1857, Harris wrote on the subject as follows (D.S., 1 Despatches, Japan, No. 7, June 18, 1857, excerpt):

> In your Dispatch of October 4th, 1855, I was informed, that it was reported, that the Japanese had interpolated the words "such as may be necessary for them" in the Seventh Article of the Treaty of Kanagawa, after the grant of the right of Trade, and I was directed to ascertain the correctness of the report. I accordingly desired the Governors of Simoda, to furnish me with a Copy of the Seventh Article of the Treaty, as it stood in their Version, which they sent to me. On examination, I find that the words, above alluded to, are not contained in it, and that the Article reads exactly, as it stands in our version.

Harris was mistaken; Article 7 of the treaty reads as follows in the translation thereof made by Dr. Sakanishi from the Japanese original:

> When ships of the United States enter the above-mentioned two ports they are permitted to acquire necessary objects with gold and silver coins and goods. Of course, such transactions shall be carried out according to the regulations established by the Japanese Government. Furthermore, in case the Japanese do not desire to have the articles of goods offered to them by the ships of the United States, the latter agrees to take them back.

Moreover, Dr. Arthur W. Hummel, Chief of the Division of Orientalia, Library of Congress, who has been good enough to examine the two Chinese translations of the treaty which are in the file, writes under date of November 17, 1937:

> For the English phrase "and articles of goods for other articles of goods" the two Chinese texts agree in reading "and sundry articles for sundry necessary articles". That is to say, the word "necessary" appears in the Chinese, which in that respect departs from the English version.

This is the wording of Article 11 in the English version of the treaty:

> There shall be appointed by the Government of the United States, Consuls or Agents to reside in Simoda at any time after the expiration of Eighteen months from the date of the Signing of this Treaty, provided that either of the two governments deem such arrangement necessary.

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The Japanese version of Article 11 is quite different;[1] it is thus translated by Dr. Sakanishi:

> After the two Governments think it necessary and desirable, it is possible to have a United States official stationed at Shimoda. However, the matter does not need to be decided upon until after the expiration of eighteen months from the signing of the treaty.

In respect of the principal difference in meaning between the two versions, the Chinese translations are in line with the Japanese; regarding Article 11 Dr. Hummel writes (November 17, 1937):

> Where the English says "either" the Chinese translations agree in saying "both". The English and the Chinese, therefore, do not coincide at this point. In this same Article 11 there is no equivalent for the words "and Agents" in the Chinese translation signed by Matsuzaki Michitaro. The latter refers only to "Consuls". But the Chinese translation signed by S. Wells Williams, being an avowed translation from the English, adds the word *jên*, meaning "person" or "persons", as if to compensate for the omission.

The Netherlandish translation of Article 11, however, is throughout equivalent of the English version.

According to the English version of Article 12, the ratifications of the treaty were to be "exchanged within eighteen months from the date of the Signature thereof, or sooner if practicable". The Netherlandish translation is to the same effect, although omitting the phrase "or sooner if practicable".

When Commander Henry A. Adams, U.S.N., arrived at Shimoda on January 26, 1855, on his mission to exchange the ratifications, less than a year had elapsed since the signing of the treaty; the Japanese officials considered that exchange prior to the expiry of the period of eighteen months would be premature; they took this view because they relied on the Japanese version of Article 12, which, as translated by Dr. Sakanishi, with the final clauses, reads thus:

> After the present treaty is decided upon and signed, the two signatory nations will faithfully observe it. However, the President of the United States, after conferring with the Senate and ministers and agreeing to the treaty, will then write to the Taikun of Japan. This matter will be brought up again after eighteen months from the present date, and after receiving the approval of the Taikun, the ratifications shall be exchanged.
>
> The plenipotentiaries of the United States of America and Japan are signing the statements of the foregoing articles.
>
> 7th year of Kaei, 3d month, 3d day.
>
> | | |
> |---|---|
> | Hayashi, Rector of the University | (Signature) |
> | Ido, Lord of Tsushima | (Signature) |
> | Izawa, Lord of Mimasaku | (Signature) |
> | Udono, Member of the Department of Home Affairs | (Signature) |

The point was conceded, however, and the ratifications were duly exchanged on February 21, 1855; for it was shown that the English reading was supported by both the Chinese and Netherlandish trans-

[1] The Japanese version of Article 11 is consistent with the report of the conversation between Perry and Hayashi of March 28, 1854, in Diary of an Official of the Bakufu, 112–14.

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lations (see Narrative, II, 202–6, quoted below). Regarding Article 12 in the Chinese Dr. Hummel writes (November 17, 1937):

For the phrase in Article 12 reading "within eighteen months" the Chinese translations agree in reading "from now on eighteen months". But this literal rendering, when taken in the context, actually means "within eighteen months". There is no difference in meaning between the English and the Chinese at this point.

Proceedings in the Senate

When the treaty was received at Washington it was at once sent to President Pierce by the Secretary of the Navy, James C. Dobbin, with a letter dated July 12, 1854, reading as follows (D.S., Miscellaneous Letters, July 1854):

Navy Department *July 12th 1854.*

Sir, Commander Henry A. Adams of the US. Navy, arrived in this city yesterday morning, as bearer of the Treaty recently concluded by Commodore M. C. Perry, Commanding the U.S. Squadron in the East India and China Seas, between the U. States and Japan.

I have the honor to submit it [1] herewith for your consideration and disposal, and trust it may be productive of lasting benefits to the trade and commerce of Our Country & advance the cause of civilization, liberty and religion.

It is proper that I should add that Commo Perry suggests, in a communication [2] to the Department, the importance of early action in order that intelligence of its ratification may be immediately transmitted to Japan.

I have the honor to be, sir, very respectfully
Your Obd't Serv't

J. C. Dobbin

The President

With a brief presidential message of the same date (read in the Senate on July 13) the treaty was submitted to the Senate; and on July 15, 1854, a resolution of advice and consent was unanimously adopted (Executive Journal, IX, 356, 357).

There were no papers with the treaty before the Senate except as stated in this sentence of the presidential message: "The Chinese and Dutch translations of the instrument and the chart and sketch [3] to which it refers are also herewith communicated". Thus the despatches of Commodore Perry Nos. 42 and 43, of March 20–23 and April 1, 1854, reporting the progress and conclusion of his negotiations (printed later in these editorial notes), were not at the time communicated.[4] Certain relevant papers had, however, been previously transmitted to the Senate with the presidential message of March 31, 1854 (the day on which the treaty was signed), in response to a Senate

[1] Meaning, presumably, the two versions of the treaty, with the chart and the two translations sent to the Senate.

[2] No despatch to this effect has been found; the communication was perhaps transmitted verbally by Commander Adams.

[3] The words "chart and sketch" mean merely the chart of Article 5 of the treaty.

[4] Those despatches, with correspondence and other papers relating to the expedition of Commodore Perry, were sent to the Senate on January 30, 1855, in response to a requesting resolution of December 6, 1854, and are printed in Senate Executive Document No. 34, 33d Congress, 2d session (serial 751).

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resolution of March 13 (Senate Confidential Executive Document No. 21, 33d Congress, 1st session; 34 Regular Confidential Documents, 305–34). In chronological order those papers are as follows:

1. Letter of Charles M. Conrad, Secretary of State ad interim, to John P. Kennedy, Secretary of the Navy, November 5, 1852.
2. Instruction of the Secretary of the Navy to Commodore Perry, November 13, 1852.
3. Letter of President Fillmore to the Emperor of Japan, November 13, 1852.
4. Instruction of Secretary of State Everett to Commodore Perry, February 15, 1853.
5. Despatch of Commodore Perry to James C. Dobbin, Secretary of the Navy, August 3, 1853, with the accompanying "Notes", etc.
6. Instruction of Secretary of State Marcy to Commissioner Robert M. McLane (in part), November 9, 1853.
7. Instruction of the Secretary of the Navy to Commodore Perry, November 14, 1853.
8. Instruction of the Secretary of the Navy to Commodore Perry, February 25, 1854.
9. Letter of Secretary of the Navy Dobbin to Secretary of State Marcy, March 30, 1854.
10. Report of Secretary of State Marcy to the President, March 31, 1854.

Of the papers listed, the first five and the seventh are printed and the sixth is in part quoted in these editorial notes; the eighth is printed in serial 751, page 116.

Instructions

The mission of Commodore Perry to the Far East was initiated during the administration of President Fillmore.[1] However, before that mission was entrusted to Commodore Perry, instructions for a mission to Japan had been given to Commodore John H. Aulick, U.S.N., by Secretary of State Webster under date of June 10, 1851, in these terms (D.S., 1 Special Missions, 318–21):

> The moment is near, when the last link in the chain of oceanic steam-navigation is to be formed. From China and the East-Indies to Egypt, thence through the Mediterranean and the Atlantic Ocean to England, thence again to our happy shores, and other parts of this great Continent, from our own ports to the Southern-most part of the Isthmus, that connects the two Western Continents; and from its Pacific coast, north- and south-wards, as far as civilization has spread,—the steamers of other nations and of our own, carry intelligence, the wealth of the world, and thousands of travellers.

[1] For previous missions and intercourse, see the chapter on "Early Voyages to Japan, 1797–1849", in Paullin, Diplomatic Negotiations of American Naval Officers, 215–43; Dennett, Americans in Eastern Asia, 242–59; Wriston, Executive Agents in American Foreign Relations, 351–59; Paullin, "Early Voyages of American Naval Vessels to the Orient", in United States Naval Institute Proceedings, XXXVI, 429–63, 707–34, 1073–99; XXXVII, 239–75, 387–417; also Nitobé, "American-Japanese Intercourse Prior to the Advent of Perry", in Annual Report of the American Historical Association, 1911, I, 129–40; and for the earlier period generally, see Nitobé, Intercourse between the United States and Japan, 31–40; Sakamaki, *op. cit.*

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It is the President's opinion, that steps should be taken at once, to enable our enterprising merchants, to supply the last link in that great chain, which unites all nations of the world, by the early establishment of a line of Steamers from California to China. In order to facilitate this enterprise, it is desirable, that we should obtain from the Emperor of Japan permission, to purchase from his subjects the necessary supplies of coal, which our steamers on their out- and inward voyages may require. The well known jealousy with which the Japanese Empire has, for the last two centuries, rejected all overtures from other nations to open its ports to their vessels,—embarasses all new attempts, to change the exclusive policy of that country.

The interests of commerce, and even those of humanity, demand, however, that we should make another appeal to the Sovereign of that country, in asking him to sell to our Steamers,—not the manufactures of his artizans or the results of the toil of his husbandmen,—but a gift of Providence, deposited by the Creator of all things in the depths of the Japanese Islands, for the benefit of the human family.

By the President's direction I now transmit to you a letter to the Emperor of Japan, (with an open copy,) which you are to carry to Jeddo, his capital, in your flagship, accompanied by as many of the vessels of the Squadron under your command, as may conveniently be employed in this service. A Chinese translation of this letter will be furnished to you by the United States Legation at Canton, or sent to your anchorage at Hong Kong or Macao.

At one of the latter places you will probably meet with a national vessel, detached by the Commodore of the Squadron in the Pacific,—(as you will perceive by the enclosed copy of a correspondence between this and the Navy Department,) to carry to you a number of shipwrecked Japanese mariners, who were, some time ago, picked up at sea by the Barque Auckland. These men you will take with you to Jeddo, and deliver them over to the officers of the Emperor, giving them through your interpreter the assurance, that the American Government will never fail to treat with kindness any of the Natives of Japan, whom misfortune may bring to our shores; and that it expects similar treatment of such of its own citizens, who may be driven on the Coasts of Japan.

The letter of the President to the Emperor of Japan, you will deliver to such of his high officers, as he may appoint for the purpose of receiving it. To them you will, also, explain the main object of your visit.

Mineral coal is so abundant in Japan, that the Government of that country can have no reasonable objection to supply our steamers, at fair prices, with that great necessary of commerce. One of the eastern ports of Niphon would be the most desirable place for this purpose. Should, however, the Government of Japan persist in following out its system of exclusiveness, you might perhaps induce them, to consent to the transportation of the coal by their own vessels to a neighboring island, easy of access, where the steamers could supply their wants, avoiding thus the necessity of an intercourse with any large number of the people of the country.

It is considered important that you should avail yourself of every occasion to impress on those Japanese officers, with whom you will be brought in contact, that the Government of the United States does not possess any power over the religion of its own citizens, and that there is therefore no cause to apprehend that it will ever interfere with the religion of other countries.

The President, although fully aware of the great reluctance hitherto shown by the Japanese Government to enter into treaty stipulations with any foreign nation, a feeling which it is sincerely wished that you may be able to overcome,—has thought it proper, in anticipation of this latter favorable contingency, to invest you with full power to negotiate & sign a treaty of Amity and Commerce between the United States and the Empire of Japan.

I transmit, herewith, the Act of the President clothing you with that Power, as also copies of the treaty between the United States and China, with Siam and with Muscat,[1] which may, to a certain extent, be of use to you as precedents. It is important, that you should secure to our vessels the right to enter one or more of the ports of Japan, and there to dispose of their cargoes, either by sale or by

[1] Respectively Documents 109, 76, and 77.

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barter, without being subjected to extravagant port-charges; and even more important is it, that the Government of Japan should bind itself to protect American sailors and property, which may be wrecked on their shores. The second Article of our Treaty with Muscat, and the 5th Article of the Treaty with Siam embrace these objects.

Every treaty has to be submitted to the Senate, for ratification, as you are aware. In consideration of the great distance between the two countries, and unforeseen difficulties, it would be prudent, should you succeed in effecting the object proposed, to fix the period for the exchange of the ratifications at three years.

Two of the papers transmitted with the foregoing instruction, the letter of President Fillmore to the Emperor of Japan (D.S., 2 Communications to Foreign Sovereigns and States, 161–62) and the full power to Commodore Aulick (D.S., 3 Credences, 408), follow:

Millard Fillmore, President of the United States of America,

To His Imperial Majesty,
the Emperor of Japan.

Great & Good Friend: I send you this letter, by an envoy of my own appointment, an officer of high rank in his country; who is no missionary of religion. He goes by my command to bear to you my greeting & good wishes; and to promote friendship & commerce between the two countries.

You know that the United States of America now extend from sea to sea; that the great countries of Oregon & California are parts of the United States; and that from these countries, which are rich in gold & silver & precious stones, our steamers can reach the shores of your happy land in less than twenty days.

Many of our ships will now pass in every year, and some perhaps in every week, between California and China; these ships must pass along the Coast of your Empire; storms & winds may cause them to be wrecked on your shores, and we ask & expect from your friendship & your greatness, kindness for our men & protection for our property. We wish that our people may be permitted to trade with your people, but we shall not authorise them to break any laws of your Empire. Our object is friendly commercial intercourse, and nothing more. You have many productions, which we should be glad to buy, & we have productions which might suit your people.

Your Empire has a great abundance of coal; this is an article which our Steamships, in going from California to China, must use. They would be glad that a harbor in Your Empire should be appointed, to which coal might be brought, and where they might always be able to purchase it.

In many other respects commerce between Your Empire and our Country would be useful to both. Let us consider well, what new interests arise from these recent events, which have brought our two countries so near together; and what purposes of friendship, amity & intercourse they ought to inspire into the breasts of those who govern both countries.

Farewell.

Given under my hand & seal, at the City of Washington, the tenth day of May, 1851, and of the Independence of the United States the seventy fifth.

Millard Fillmore.

By the President:
Daniel Webster, *Secretary of State.*

Millard Fillmore, President of the United States of America,

To all to whom these presents shall come, Greeting:

Know Ye, that reposing special trust & confidence in the integrity, prudence & abilities of John H. Aulick, a distinguished naval officer & citizen of these United States, I have invested him with full power, for & in the name of the said United

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States, to meet or confer with any person or persons, furnished with like powers, on the part of His Majesty, the Emperor of Japan, and with him or them, to negotiate, conclude and sign a Convention or Conventions, Treaty or Treaties, of & concerning the friendship, commerce & navigation, of the Two countries, & all matters & subjects connected therewith, which may be interesting to the two nations, submitting the same to the President of the United States, for his final ratification, by & with the advice & consent of the Senate of the United States.

In testimony whereof I have caused the Seal of the United States to (L.S.) be hereunto affixed. Given under my hand, at the City of Washington, the thirtieth day of May, in the year, 1851.

MILLARD FILLMORE.

By the President:
W. S. DERRICK, *Acting Secretary of State.*

The correspondence with the Navy Department referred to in the instructions to Commodore Aulick dealt with the "shipwrecked Japanese mariners"; it comprised a letter from Secretary of State Webster to Secretary of the Navy Graham dated May 9, 1851 (D.S., 39 Domestic Letters, 70–71), and the answer of the latter of May 10, 1851, enclosing a copy of an instruction of the same date to Commodore Charles S. McCauley, commanding the United States Squadron in the Pacific Ocean, directing the conveying of those seamen to Hong Kong or Macau by a vessel of the Navy (D.S., Miscellaneous Letters, April–May, 1851). In his letter Webster wrote:

You will doubtless have seen in the public journals that a number of Japanese were some time since picked up at sea, six hundred miles from the Japanese Islands by the barge "Auckland", Capt. Jennings, by whom they had been treated very kindly, brought into the port of San Francisco, and subsequently placed on board the revenue cutter "Polk", to await arrangements for their return to their native country.

Captain Aulick has suggested to me, and I cheerfully concur in his opinion, that this incident may afford a favorable opportunity for opening commercial relations with the Emperor of Japan, or at least of placing our intercourse with that Island upon a more easy footing.

Under these circumstances, I have the honor to inquire whether there is any small national vessel on the western coast of the United States that could, without inconvenience to the public service, be ordered to take these unfortunate men on board at San Francisco, and proceed with them to Hong-Kong? Commodore Aulick is charged with the delivery of a letter from the President of the United States to the Emperor of Japan, and if these Japanese mariners can be thus forwarded to Hong Kong, there to await the arrival of the Commodore, he could there take them on board one of the vessels under his command, and return them to their native land. Accompanied by an imposing naval force, as he probably would be on this service, and with the kindly dispositions awakened in the bosom of the Emperor, towards this Government, by the act of restoring these unfortunates to their homes, the occasion it is believed, would be most auspicious for the accomplishment of the more important objects of Commodore Aulick's mission.[1]

[1] The Japanese sailors, numbering seventeen, were taken on board the *St. Marys* from the revenue cutter *Polk* at San Francisco on February 28, 1852, for passage to China; on March 21, at Hawaii, the captain of the Japanese died; on May 8, in Macau Roads, the remaining sixteen were transferred to the *Susquehanna* (National Archives, Log Book, U.S.S. *St. Marys*). But only one of the Japanese, Sentaro, better known by the nickname of Sam Patch, was willing to proceed to Japan; and in April 1853 the others, at their own request, were permitted to leave the *Susquehanna* at Shanghai (National Archives, Log Book, U.S.S. *Susquehanna*). On April 9, 1853, Sam Patch was enrolled in the crew of the *Susquehanna* (*ibid.*); he accompanied the expedition of Commodore Perry on each of its two visits to

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The papers for Commodore Aulick[1] were sent in "two sealed packets" to Dr. Peter Parker, Secretary of Legation at Canton and subsequently Commissioner to China. With them were copies of the full power and of the letter to the Emperor of Japan, to be "translated into Japanese or Chinese, as you shall judge best" (D.S., 1 Instructions, China, 70, June 13, 1851). Parker wrote of translations of the full power and the letter into two languages, Chinese and "Dutch also, as the Dutch language was found by Commodore James Biddle in 1846, to be the best medium of communication with the Japanese in the harbor of Jedo" (D.S., 6 Despatches, China, No. 20, September 24, 1851).

Receipt of his instructions and the accompanying papers was acknowledged by Commodore Aulick from the U.S. steam frigate *Susquehanna* at Hong Kong under date of February 20, 1852 (D.S., 19 Special Agents); but decision had previously been reached to relieve Aulick of his command; he was directed (November 18, 1851) by the Secretary of the Navy (William A. Graham) to remain at Hong Kong or Macau until the arrival of his successor (Paullin, Diplomatic Negotiations of American Naval Officers, 249–50); so no steps were taken by Commodore Aulick under his instructions;[2] and they were superseded by those of a more elaborate character given to Commodore Perry, who was directed on March 24, 1852, to take command of the East India Squadron (*ibid.*, 253).

The instructions of President Fillmore to Commodore Perry (who at the time was in the United States) were embodied in this letter dated November 5, 1852, from the Secretary of State ad interim, Charles M. Conrad,[3] to the Secretary of the Navy, John P. Kennedy (D.S., 3 Special Missions, 1–15):

Japan and returned to the United States in the *Mississippi*; he lived for a time at Hamilton, New York, with one of his former shipmates, a marine named Jonathan Goble; and when, in 1860, Goble went to Japan as a missionary, Sam Patch accompanied him, to end his days in his native land (see Narrative, I, 340, 485–86; Nitobé, Intercourse between the United States and Japan, 157–58). Two others of those sailors became well known, Joseph Heco (author of The Narrative of a Japanese), and Denkichi, who was assassinated on January 30, 1860, while in the service of the British Legation at Yedo (see Treat, Diplomatic Relations between the United States and Japan, I, 94–96; Narrative, I, 486; also Sakamaki, *op. cit.*, 78–79).

[1] Who had sailed from Old Point Comfort on June 8 (Paullin, Diplomatic Negotiations of American Naval Officers, 247).

[2] Commodore Aulick relinquished his command at Hong Kong on March 11, 1853, and thus before the arrival there of Commodore Perry on the following April 7 (see Perry's despatch No. 8, of April 9, 1853, to the Secretary of the Navy, in serial 751, p. 17). On the antecedents of the instructions to Aulick and the reasons for his supersession, see Paullin, *op. cit.*, 246–51.

[3] Following the death of Daniel Webster on October 24, Charles M. Conrad, of Louisiana, Secretary of War, was Secretary of State ad interim from October 25 to November 5, 1852; the tenure of office of Edward Everett began on November 6.

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DEPARTMENT OF STATE,
Washington, November, 5, 1852.

Honorable J. P. KENNEDY,
Secretary of the Navy.

SIR: As the squadron destined for Japan will shortly be prepared to sail, I am directed by the President to explain the objects of the expedition and to give some general directions as to the mode by which those objects are to be accomplished.

Since the Islands of Japan were first visited by European nations efforts have constantly been made by the various maritime powers to establish commercial intercourse with a country whose large population and reputed wealth hold out great temptations to mercantile enterprise. Portugal was the first to make the attempt and her example was followed by Holland, England, Spain and Russia and finally by the United States. All these attempts, however, have thus far been unsuccessful,—the permission enjoyed for a short period by the Portuguese to trade with the Islands, and that granted to Holland to send annually a single vessel to the Port of Nangasaki, hardly deserving to be considered exceptions to this remark.

China is the only country which carries on any considerable trade with these Islands.

So rigorously is this system of exclusion carried out that foreign vessels are not permitted to enter their ports in distress, or even to do an act of kindness to their own people. In 1831 a Japanese Junk was blown out to sea and, after drifting about for several months was cast ashore near the mouth of the Columbia River in Oregon. An American ship, the Morrison, undertook to carry the survivors of the crew back to their country, but, on reaching the Bay of Yedo, she was fired into from the neighboring shore. She repaired to another part of the Island and attempted to land, but meeting with the same reception there she returned to America with the Japanese on board.[1]

When vessels are wrecked or driven ashore on the Islands their crews are subjected to the most cruel treatment. Two instances of this have recently occurred. In the year 1846 two American Whaling Ships, the Lagoda and the Lawrence, having been wrecked on the Island of Niphon[2] their crews were captured and treated with great barbarity, and it is believed that their lives were spared only through the intercession of the Dutch Governor of Nangasaki. See Senate Doc. N° 59, 1st Session 32nd Congress, a copy of which is herewith enclosed [serial 620].

Every nation has undoubtedly the right to determine for itself the extent to which it will hold intercourse with other nations. The same law of nations, however, which protects a nation in the exercise of this right, imposes upon her certain duties which she cannot justly disregard. Among these duties none is more imperative than that which requires her to succor and relieve those persons who are cast by the perils of the ocean upon her shores. This duty is, it is true, among those that are denominated by writers on public law imperfect and which confer no right on other nations to exact their performance; nevertheless if a nation not only habitually and systematically disregards it, but treats such unfortunate persons as if they were the most atrocious criminals, such nation may justly be considered as the common enemy of mankind.

That the civilized nations of the world should for ages have submitted to such treatment by a weak and semi-barbarous people can only be accounted for on the supposition that, from the remoteness of the country, instances of such treatment were of rare occurrence, and the difficulty of chastising it very great. It can

[1] Regarding the visit of the *Morrison* in 1837, see Paullin, *op. cit.*, 218–19; Nitobé, "American-Japanese Intercourse", 133–34; and Chinese Repository, VI, 209–29, 353–80, September and December 1837.

[2] This is not very accurate. The *Lagoda* was not wrecked; her crew deserted; some of them came ashore in small boats near Matsumai (now Fukuyama, about forty miles from Hakodate) in June 1848 and were imprisoned, first at Matsumai and later at Nagasaki (see Paullin, *op. cit.*, 234–43; Nitobé, "American-Japanese Intercourse", 137). The *Lawrence* was wrecked on the coast of one of the Kurile Islands in May 1846 (see *ibid.*).

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hardly be doubted that if Japan was situated as near the continent of Europe or of America as it is to that of Asia, its Government would long since have been either treated as barbarians or been compelled to respect those usages of civilized states of which it receives the protection.

This Government has made two attempts to establish commercial intercourse with Japan. In the year 1832, a Mr. Roberts was appointed a Special Agent of the Government with authority to negotiate treaties with sundry nations in the East, and among others with Japan, but he died before he arrived at the Island.[1]

In 1845 Commodore Biddle was sent with two vessels of war to visit Japan and ascertain whether its ports were accessible.[2] He was cautioned, however, "not to excite a hostile feeling or a distrust of the Government of the United States".

He proceeded to Yedo but was told that the Japanese could trade with no foreign nations except the Dutch and Chinese, and was peremptorily ordered to leave the Island and never to return to it. A personal indignity was even offered to Commodore Biddle, and it is not improbable that the barbarity which a short time afterwards was practised by these people towards the crew of the Lagoda may have been, in part, occasioned by the forbearance which that excellent officer felt himself bound under his instructions to exercise towards them. (See the Doc. above mentioned p: [15])

Recent events—the navigation of the ocean by steam—the acquisition and rapid settlement by this country of a vast territory on the Pacific—the discovery of gold in that region—the rapid communication established across the Isthmus which separates the two oceans—have practically brought the countries of the East in closer proximity to our own,—although the consequences of these events have scarcely begun to be felt, the intercourse between them has already greatly increased and no limits can be assigned to its future extension.

The duty of protecting those American citizens who navigate those seas is one that can no longer be deferred. In the year 1851 Instructions [3] were accordingly given to Commodore Aulick then Commanding our Naval forces in the East Indies to open a negotiation with the Government of Japan. It is believed that nothing has been done under these instructions and the powers conferred on Commodore Aulick are considered as superseded by those now given to Commodore Perry.

The objects sought by this Government are—

1st to effect some permanent arrangement for the protection of American seamen and property wrecked on these Islands, or driven into their ports by stress of weather.

2. The permission to American vessels to enter one or more of their ports in order to obtain supplies of provisions, water, fuel &c., or, in case of disasters, to refit so as to enable them to prosecute their voyage.

It is very desirable to have permission to establish a depôt for coal, if not on one of the principal Islands, at least on some small uninhabited one of which, it is said, there are several in their vicinity.

3. The permission to our vessels to enter one or more of their ports for the purpose of disposing of their cargoes by sale or barter.

As this Government has no right to make treaties for or to redress the grievances of other nations, whatever concessions may be obtained on either of the above points need not, of course, apply, in terms, to the inhabitants or vessels of any other nation. This Government, however, does not seek by this expedition to obtain any exclusive commercial advantage for itself, but on the contrary desires and expects that whatever benefits may result from it will ultimately be shared by the civilized world. As there can be no doubt that if the ports of the country are once opened to one nation they would soon be opened to all; it is believed that, for reasons hereinafter mentioned, any reference in your negotiations to the wrongs

[1] Regarding the two missions of Edmund Roberts to the Far East, see the editorial notes to Documents 76 and 77. Roberts died at Macau on June 12, 1836.

[2] Regarding the mission of Commodore Biddle in 1846, see Paullin, *op. cit.*, 222–32.

[3] Of June 10, 1851, printed above.

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or claims of other nations, so far from promoting this object, would tend to defeat it.

The next question is, how are the above mentioned objects to be attained?

It is manifest from past experience, that arguments or persuasion addressed to this people unless they be seconded by some imposing manifestation of power will be utterly unavailing.

You will therefore be pleased to direct the Commander of the Squadron to proceed, with his whole force, to such point on the coast of Japan as he may deem most advisable and there endeavor to open a communication with the Government, and, if possible, to see the Emperor in person, and deliver to him the letter of introduction from the President, with which he is charged. He will state that he has been sent across the ocean by the President to deliver that letter to the Emperor and to communicate with his Government on matters of importance to the two countries. That the President entertains the most friendly feelings towards Japan, but has been surprized and grieved to learn that when any of the people of the United States go of their own accord or are thrown by the perils of the sea within the dominions of the Emperor they are treated as if they were his worst enemies. He will refer particularly to the cases of the ships Morrison, Lagoda, and Lawrence above mentioned.

He will inform him of the usages of this country and of all christian countries in regard to shipwrecked persons and vessels and will refer to the case of the Japanese subjects who were recently picked up at sea in distress and carried to California from whence they have been sent to their own country,—and will state that this Government desires to obtain from that of Japan some positive assurance that persons who may hereafter be shipwrecked on the coast of Japan or driven by stress of weather into her ports shall be treated with humanity; and to make arrangements for a more extended commercial intercourse between the two countries. The establishment of this intercourse will be found a difficult, but perhaps not an impossible task.

The deep-seated aversion of this people to hold intercourse with Christian nations is said to be owing chiefly to the indiscreet zeal with which the early Missionaries, particularly those of Portugal, endeavored to propogate their religion. The Commodore will therefore say that the Government of this country, unlike those of every other Christian country, does not interfere with the religion of its own people, much less with that of other nations. It seems that the fears or the prejudices of the Japanese are very much excited against the English, of whose conquests in the East and recent invasion of China they have probably heard. As the Americans speak the same language as the English, it is natural that they should confound citizens of the United States with British subjects. Indeed their barbarous treatment of the crews of the vessels above referred to was partly occasioned by the suspicion that they were really English. (See the statement of the crew of the Lagoda.)

Commodore Perry will therefore explain to them that the United States are connected with no Government in Europe. That they inhabit a great country which lies directly between them and Europe, and which was discovered by the nations of Europe about the same time that Japan herself was first visited by them. That the portion of this continent lying nearest to Europe was first settled by emigrants from that country, but that its population has rapidly spread through the country until it has reached the Pacific Ocean. That we have now large cities from which, with the aid of steam, Japan can be reached in twenty days. That our commerce with all that portion of the globe is therefore rapidly increasing and that part of the ocean will soon be covered with our vessels. That therefore as the United States and Japan are becoming every day nearer and nearer to each other, the President desires to live in peace and friendship with the Emperor; but that no friendship can long exist between them unless Japan should change her policy and cease to act towards the people of this country as if they were her enemies. That however wise this policy may originally have been it is unwise and impracticable now that intercourse between the two countries is so much more easy and rapid than it formerly was.

If, after having exhausted every argument and every means of persuasion, the Commodore should fail to obtain from the Government any relaxation of their system of exclusion, or even any assurance of humane treatment of our

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shipwrecked seamen, he will then change his tone and inform them in the most unequivocal terms that it is the determination of this Government to insist, that hereafter all citizens or vessels of the United States that may be wrecked on their coasts or driven by stress of weather into their harbors shall, so long as they are compelled to remain there, be treated with humanity, and that if any acts of cruelty should hereafter be practised upon citizens of this country whether by the Government or by the inhabitants of Japan they will be severely chastised. In case he should succeed in obtaining concessions on any of the points above mentioned, it is desirable that they should be reduced into the form of a treaty for negotiating which he will be furnished with the requisite powers.

He will also be furnished with copies of the treaties made by this Government with China, Siam and Muscat,[1] which may serve him as precedents in drawing up any treaty he may be able to make. It would be well to have one or more of these translated into the Japanese tongue which, it is presumed, can be done in China.

He will bear in mind that as the President has no power to declare war his mission is necessarily of a pacific character, and will not resort to force unless in self-defence in the protection of the vessels and crews under his command, or to resent an act of personal violence offered to himself or to one of his officers.

In his intercourse with this people, who are said to be proud and vindictive in their character, he should be courteous and conciliatory but at the same time firm and decided. He will therefore submit with patience and forbearance to acts of discourtesy to which he may be subjected by a people whose usages it will not do to test by our standard of propriety, but at the same time, will be careful to do nothing that may compromit, in their eyes, his own dignity or that of the country. He will on the contrary do every thing to impress them with a just sense of the power and greatness of this country and to satisfy them that its past forbearance has been the result, not of timidity, but of a desire to be on friendly terms with them.

It is impossible by any instructions however minute to provide for every contingency that may arise in the prosecution of a mission of so peculiar and novel a character. For this reason as well as on account of the remoteness of the scene of his operation it is proper that the Commodore should be invested with large discretionary powers and should feel assured that any departure from usage or any error of judgement he may commit will be viewed with indulgence.

The Government of Holland has communicated to this Government that instructions had been given to the superintendent of their factory at Decima [2] to promote by every means in his power the success of the expedition, and the kindness that has heretofore been shown by that officer towards our countrymen in captivity leaves no room for doubt that he will cheerfully fulfil these instructions.

The Commissioner of the United States to China [3] has been directed to prefer certain claims of citizens of the United States against that Government. As the presence of the Squadron might give some additional weight to the demand, you will please direct its Commander, (if he finds he can do so without serious delay or inconvenience) to touch at Hong-Kong or Macao and remain there as long as he may deem it advisable.

If the squadron should be able, without interfering with the main object for which it is sent, to explore the coasts of Japan and of the adjacent continent and Islands, such an exploration would not only add to our stock of geographical knowledge, but might be the means of extending our commercial relations and of securing ports of refuge and supply for our whaling vessels in those remote seas. With this view he will be provided with powers authorizing him to negotiate treaties of Amity and Navigation with any and all established and independent sovereignties in those regions.

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[1] Respectively Documents 109, 76, and 77.

[2] Deshima, a small artificial island in the harbor of Nagasaki, where the Netherland factory was located; regarding the instructions, see below under the heading "Communications with the Netherlands".

[3] Humphrey Marshall, of Kentucky, appointed August 4, 1852.

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In the event of such a voyage he will inform himself, as far as practicable, of the population, resources and natural productions of the country, and procure and preserve specimens of the latter and the seed of such plants as may be peculiar to the country.

He will be authorized by this Department to draw on the Messrs Baring, Brothers & Co of London to a limited amount for the payment of Guides, Interpreters, Messengers &c., and of other expenses incident to his mission; as also for the purchase of such presents as it may be deemed advisable to make to promote the objects of his mission.

I have the honor to be Very respectfully,
Your obedient servant,

C. M. CONRAD,
Acting Secretary.

The foregoing from the Secretary of State ad interim was communicated to Commodore Perry with these instructions from the Secretary of the Navy of November 13, 1852 (serial 751, pp. 2–4):

U.S. NAVY DEPARTMENT
Washington Nov. 13. 1852.

Commodore M. C. PERRY
Appointed to Command the U.S. Squadron in the East India & China Seas
Norfolk. Va:

SIR, So soon as the Steam frigate Mississippi shall be in all respects ready for sea, you will proceed in her, accompanied by the Steamer Princeton to Macao, or Hong Kong in China, where the vessels of your Command will rendezvous, you will touch at such ports on your passage out, as you may deem necessary, for supplies &c.

It has been deemed necessary to increase the Naval Force of the United States in the East India & China Seas, for reasons which will be found in the enclosed Copy of a communication from the Secretary of State addressed to this Department under date of November 1852.

The force at present there, consists of the Steam frigate Susquehanna, Commander Buchanan, Sloop Plymouth, Commander Kelly, and Sloop Saratoga, Commander Walker; The Store Ship, Supply, Lt Comm'g Sinclair is on her outward passage to that Station. There will be added to this force, at the earliest day practicable the Ship-of-the-line Vermont, Captain Paulding, the Steam frigate Mississippi, Captain M°Cluney, the Corvette Macedonian, Captain Abbot, the Steamer Princeton, Commander Lea, the Steamer Alleghany,[1] Commander Sands, the Sloop Vandalia, Commander Pope, and the Store Ship, Southampton, Lieu[t] Com'g Boyle.

With this you will receive a Copy of the general instructions given to Commodore John. H. Aulick, recently in Command of the East India Squadron, which you will consider as in full force, and applicable to your command.

You will, also, receive herewith, Copies of other Orders addressed to Commodore Aulick which may require your attention after you reach your Station.

The Special Mission to Japan, with which you have been charged by the Government, will require all your firmness and prudence; in respect to which the Department entertains the fullest confidence, that they will be adequate for any emergency.

In prosecuting the object of your mission to Japan, you are invested with large discretionary powers, and you are authorized to employ despatch vessels, interpreters, Kroomen or Natives and all other means which you may deem necessary to enable you to bring about the desired results. The suggestions contained in the accompanying letter from the Secretary of State to this Department, you will consider as your guide, and follow as the instructions of the Government. You will confer with the Commissioner of the United States to China, as to the course most advisable for you to pursue, to give weight to his demands upon the Chinese

[1] The *Vermont*, the *Princeton*, and the *Alleghany* did not join the squadron of Commodore Perry.

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Government, for the settlement of claims of Citizens of the United States against that Government.

Your attention is particularly invited to the exploration of the Coasts of Japan, and of the adjacent Continents and islands.

You will cause linear or perspective views to be made of remarkable places, soundings to be taken at the entrances of Harbors, rivers &c, on and near shoals, and collect all the hydrographical information necessary for the construction of Charts.

You will be careful to collect from every reliable source, and particularly from our Consular or Commercial Agents, all the information you can, of the social, political, and Commercial conditions of the Countries and places you may visit, especially of new objects of Commercial pursuits. To these ends you will call into activity all the various talents and acquisitions of the Officers under your Command. The results of such labors and of all such researches, you will communicate to the Department as often and as complete as practicable.

What events will transpire during your absence, time alone can develope. The utmost caution and vigilance are enjoined upon all under your Command.

The Act [1] of March 2d 1837. "to provide for the enlistment of boys for the Naval Service, and to extend the term of the enlistment of Seamen, section 2d provides "that when the time of service of any person enlisted for the Navy shall expire, "while he is on board any of the public Vessels of the United States employed "on foreign Service, it shall be the duty of the Commanding Officer of the fleet, "Squadron, or Vessel, in which such person may be to send him to the United "States in some public or other Vessel, unless his detention shall be essential to "the public interests, in which case the said Officer may detain him, until the "Vessel in which he shall be serving may [*shall*] return to the United States "&c, and Section the 3d of the same Act provides "That such persons as may "be detained after the expiration of their enlistment, under the next preceding "Section of this Act, shall be subject in all respects to the laws and regulations "for the government of the Navy until their return to the United States, and "all such persons as shall be so detained, and all such as shall voluntarily re enlist, "to serve until the return of the Vessel in which they shall be serving, and their "regular discharge therefrom in the United States, shall, while so detained and "while so serving under their re-enlistment receive an addition of one fourth to "their former pay." You will therefore should it be essential to the public interests, exercise the power conferred by the Act, above recited, or should it be found practicable by new enlistments on the coasts you may visit to keep up the complements of your vessels, you will send to the United States all persons whose times of service may expire during your Cruise. You will, however, in all such cases be governed by the exigences of the service.

A subject of great importance to the success of the Expedition will present itself to your mind in relation to communications to the prints and newspapers, touching the movements of your Squadron, as well as in relation to all matters connected with the discipline and internal regulations of the vessels composing it. You will therefore enjoin upon all under your Command to abstain from writing to friends and others upon those subjects. The journals and private notes of the Officers, and other persons in the expedition must be considered as belonging to the Government, until permission shall be received from the Navy Department to publish them.[2]

For any supplies that you may need, you will address yourself seasonably to the appropriate Bureau, or take such measures to procure them, as will best subserve the objects of your cruise.

Before sailing you will cause to be sent to the Department correct muster rolls of both vessels, conformably to the 29th Article of the Act [3] for the better government of the Navy of the United States approved April 23d 1800.

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[1] 5 Statutes at Large, 153.

[2] This paragraph was the subject of Commodore Perry's General Order No. 1, dated at sea December 21, 1852 (National Archives, Log Book, U.S.S. *Mississippi*, December 21, 1852).

[3] 2 Statutes at Large, 45–53.

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Tendering my best wishes for a successful Cruise, and a safe return to your Country and friends, for yourself, Officers and the Companies of your Ships I am very respectfully

Your Obed^{t} Servt,

JOHN. P. KENNEDY

For negotiations with governments other than that of Japan five full powers dated November 11, 1852, in customary form, were issued to Commodore Perry, authorizing him to treat "concerning friendship, commerce and navigation of the two countries"; but each of those powers was in blank [1] so far as concerned the other country or ruler (D.S., 1 Special Missions, 347–48). The full power for Japan, which was in the following form, was unusual in that the salutation was particular and not general, the datal clause omitted the words "of our Lord" after "year", and the seal was not the customary paper wafer but the large pendant seal enclosed in a skippet of "pure gold" (*ibid.*, 348–49):

Millard Fillmore, President of the United States of America,

To His Imperial Majesty,
The EMPEROR OF JAPAN.

Reposing special trust and confidence in the integrity, prudence and ability of Matthew C. Perry, a Captain in the Navy of the United States, I have invested him with full power, for and in the name of the said United States, to meet and confer with any person or persons furnished with like powers on the part of Your Imperial Majesty, and with him or them to negotiate, conclude and sign a Convention or Conventions, Treaty or Treaties, of and concerning the friendship, Commerce and navigation of the two countries, and all matters and subjects connected therewith, which may be interesting to the two nations; submitting the same to the President of the United States for his final ratification, by and with the advice and consent of the Senate of the United States.

In testimony whereof, I have caused the Seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington, the thirteenth day of November, in the year one thousand eight hundred and fifty-two, and of the Independence of the United States of America the Seventy-seventh.

MILLARD FILLMORE,

By the President:
EDWARD EVERETT,
Secretary of State.

[Seal appendant]

Moreover, both the foregoing instrument and the letter from President Fillmore to the Emperor of Japan, which is presently to be quoted, were engrossed and otherwise prepared with elaboration and circumstance; there is this description of them (Narrative, I, 254–55):

These documents, of folio size, were beautifully written on vellum, and not folded, but bound in blue silk velvet. Each seal, attached by cords of inter-

[1] The wording of the instructions regarding those blank powers is vague: "any and all established and independent sovereignties in those regions". No one of the five powers was used; for Perry's "compact" with Loochoo (Ryukyu) no power was necessary (see the editorial notes to Document 166). Perry planned to treat with Siam but had no opportunity to do so (see his despatch of October 7, 1854, in serial 751, pp. 180–82; see also Narrative, II, 191–97).

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woven gold and silk with pendant gold tassels, was encased in a circular box six inches in diameter and three in depth, wrought of pure gold. Each of the documents together with its seal, was placed in a box of rosewood about a foot long, with lock, hinges, and mountings, all of gold.[1]

The letter of President Fillmore to the Emperor of Japan, dated November 13, 1852, stating the objects of the visit of Commodore Perry to be friendship, commerce, a supply of coal and provisions, and protection for shipwrecked Americans, was in these terms (D.S., 1 Special Missions, 343–47):

Millard Fillmore, President of the United States of America,

To His Imperial Majesty,
THE EMPEROR OF JAPAN.

GREAT AND GOOD FRIEND! I send you this public letter by Commodore Matthew C. Perry, an officer of highest rank in the navy of the United States, and commander of the Squadron now visiting Your Imperial Majesty's dominions.

I have directed Commodore Perry to assure Your Imperial Majesty that I entertain the kindest feelings toward Your Majesty's person and government; and that I have no other object in sending him to Japan, but to propose to Your Imperial Majesty that the United States and Japan should live in friendship and have commercial intercourse with each other.

The Constitution and Laws of the United States forbid all interference with the religions or political concerns of other Nations. I have particularly charged Commodore Perry to abstain from every act, which could possibly disturb the tranquillity of Your Imperial Majesty's dominions.

The United States of America reach from ocean to ocean and our territory of Oregon and State of California lie directly opposite to the dominions of Your Imperial Majesty. Our Steam ships can go from California to Japan in eighteen days.

Our great State of California produces about sixty millions of dollars in Gold, every year, besides silver, quick-silver, precious stones, and many other valuable articles. Japan is also a rich and fertile country and produces many very valuable articles. Your Imperial Majesty's subjects are skilled in many of the arts. I am desirous that our two countries should trade with each other, for the benefit both of Japan and the United States.

We know that the Ancient laws of Your Imperial Majesty's government do not allow of foreign trade except with the Chinese and the Dutch. But as the state of the world changes and new governments are formed, it seems to be wise from time to time to make new laws. There was a time when the ancient laws of Your Imperial Majesty's government were first made.

About the same time America, which is sometimes called the New World, was first discovered and settled by the Europeans. For a long time there were but a few people and they were poor. They have now become quite numerous; their commerce is very extensive; and they think that if Your Imperial Majesty were so far to change the ancient laws as to allow a free trade between the two countries, it would be extremely beneficial to both.

If Your Imperial Majesty is not satisfied that it would be safe altogether to abrogate the ancient laws which forbid foreign trade, they might be suspended for five or ten years, so as to try the experiment. If it does not prove as beneficial as was hoped, the Ancient laws can be restored. The United States often limit their treaties with foreign States to a few years, and then renew them or not, as they please.

I have directed Commodore Perry to mention another thing to Your Imperial Majesty. Many or our ships pass every year from California to China; and great numbers of our people pursue the Whale fishery near the shores of Japan. It sometimes happens in stormy weather that one of our ships is wrecked on Your

[1] Commodore Perry wrote of "the exquisite workmanship and costliness" of these "magnificent boxes" ("series of notes" of July 30, 1853, quoted below).

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Imperial Majesty's shores. In all such cases we ask and expect, that our unfortunate people should be treated with kindness and that their property should be protected, till we can send a vessel and bring them away. We are very much in earnest in this.

Commodore Perry is also directed by me to represent to Your Imperial Majesty that we understand there is a great abundance of Coal and provisions in the Empire of Japan. Our steam ships, in crossing the great ocean burn a great deal of Coal, and it is not convenient to bring it all the way from America. We wish that our steam-ships and other vessels should be allowed to stop in Japan and supply themselves with Coal, provisions and water. They will pay for them in money, or any thing else Your Imperial Majesty's subjects may prefer; and we request Your Imperial Majesty to appoint a convenient port in the Southern part of the Empire, where our vessels may stop for this purpose. We are very desirous of this.

These are the only objects for which I have sent Commodore Perry with a powerful Squadron to pay a visit to Your Imperial Majesty's renowned City of Yeddo:—friendship, commerce, a supply of coal and provisions, and protection for our shipwrecked People.

We have directed Commodore Perry to beg Your Imperial Majesty's acceptance of a few presents. They are of no great value in themselves, but some of them may serve as specimens of the articles manufactured in the United States, and they are intended as tokens of our sincere and respectful friendship.

May the Almighty have Your Imperial Majesty in His great and holy keeping!

In Witness whereof I have caused the Great Seal of the United States to be hereunto affixed, & have subscribed the same with my name, at the City of Washington, in America, the seat of my Government, on the thirteenth day of the month of November, in the year one thousand eight hundred and fifty-two.

Your Good Friend,

MILLARD FILLMORE.

By the President:
EDWARD EVERETT,
Secretary of State.

[Seal appendant]

Both in the United States and abroad the projected expedition to Japan had been widely discussed; and there was this paragraph on the subject in the annual message of the President to Congress of December 6, 1852 (Richardson, V, 167–68):

Our settlements on the shores of the Pacific have already given a great extension, and in some respects a new direction, to our commerce in that ocean. A direct and rapidly increasing intercourse has sprung up with eastern Asia. The waters of the Northern Pacific, even into the Arctic Sea, have of late years been frequented by our whalemen. The application of steam to the general purposes of navigation is becoming daily more common, and makes it desirable to obtain fuel and other necessary supplies at convenient points on the route between Asia and our Pacific shores. Our unfortunate countrymen who from time to time suffer shipwreck on the coasts of the eastern seas are entitled to protection. Besides these specific objects, the general prosperity of our States on the Pacific requires that an attempt should be made to open the opposite regions of Asia to a mutually beneficial intercourse. It is obvious that this attempt could be made by no power to so great advantage as by the United States, whose constitutional system excludes every idea of distant colonial dependencies. I have accordingly been led to order an appropriate naval force to Japan, under the command of a discreet and intelligent officer of the highest rank known to our service. He is instructed to endeavor to obtain from the Government of that country some relaxation of the inhospitable and antisocial system which it has pursued for about two centuries. He has been directed particularly to remonstrate in the strongest language against the cruel treatment to which our shipwrecked mariners have often been subjected and to insist that they shall be treated with humanity. He is instructed, however, at the same time, to give that Government the amplest assurances that

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the objects of the United States are such, and only such, as I have indicated, and that the expedition is friendly and peaceful. Notwithstanding the jealousy with which the Governments of eastern Asia regard all overtures from foreigners, I am not without hopes of a beneficial result of the expedition. Should it be crowned with success, the advantages will not be confined to the United States, but, as in the case of China, will be equally enjoyed by all the other maritime powers. I have much satisfaction in stating that in all the steps preparatory to this expedition the Government of the United States has been materially aided by the good offices of the King of the Netherlands, the only European power having any commercial relations with Japan.

Communications with the Netherlands

For more than two centuries [1] prior to the expedition of Commodore Perry the only Western power [2] having relations with Japan was the Netherlands; those relations were, generally, commercial only; they were of limited scope, even commercially; the trade permitted was the sending of one vessel a year to Nagasaki.[3]

Owing to then recent events in China, a change in the Japanese policy of isolation was urged by the King of the Netherlands in a letter of February 15, 1844, addressed to the Shogun. The advice was rejected in a response of the Japanese Government dated July 4, 1845.[4] A fairly accurate press account of the correspondence mentioned was transmitted to the Department of State by Auguste Davezac, Chargé d'Affaires at The Hague, with his undated despatch No. 20, of about January 1, 1847 (D.S., 13 Despatches, Netherlands). Some five years later the correspondence was textually communicated to this Government by the Government of the Netherlands, and somewhat crude English translations thereof (from the Netherlandish) were sent to Secretary of State Webster by the Chargé d'Affaires at The Hague, George Folsom (D.S., 14 Despatches, Netherlands, No. 33, July 20, 1852, enclosures). The two letters follow in translation, that of February 15, 1844, from Greene, "Correspondence between William II. of Holland and the Shōgun of Japan", 110–14,[5] and that of July 4, 1845, from the Netherlandish translation enclosed with the despatch of Folsom last cited:

[1] From the edict of 1636 (see Gubbins, *op. cit.*, 16–17).

[2] There were commercial relations between China and Japan, but they were not extensive (see Treat, *op. cit.*, I, 5–6); and Japan had "confidential friendly relations" with Chosen and Loochoo, according to the official letter of July 4, 1845, a translation of which is printed below.

[3] According to figures obtained at The Hague by Folsom, the exports from Java and Madoera to Japan for 1848 and 1849 were respectively 175,829 and 321,414 florins, sugar being the largest of the items; the imports for the same years were respectively 521,830 and 487,791 florins, nearly 70 percent of which was copper (D.S., 14 Despatches, Netherlands, No. 25, February 24, 1852, enclosure).

[4] The Japanese date is the 1st day of the 6th month of the 2d year of Koka; by the tables in Bramsen, *op. cit.*, 124–25, this would be July 5, 1845.

[5] This learned and interesting monograph by the Reverend Dr. D. C. Greene is in 34 Transactions of the Asiatic Society of Japan, pt. 4, pp. 99–132. Therein are printed (*a*) the original text of the letter of the King of the Netherlands and an English translation thereof; (*b*) a list of the presents accompanying the letter of the King of the Netherlands; (*c*) an apparently contemporaneous annotated Japanese translation of the letter of the King of the Netherlands, with renderings of the annotations; (*d*) the Japanese text of the answer of the Japanese Government and an English translation thereof which may be compared with the translation from the Netherlandish here printed.

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[*Letter of the King of the Netherlands, February 15, 1844*]

We, William the Second, by the grace of God King of the Netherlands, Prince of Orange and Nassau, Grand Duke of Luxemburg, etc., write this Our royal letter with a faithful heart to Our friend, the very noble, most serene, and all-powerful sovereign of the great Empire of Japan, who has his seat in the Imperial Palace of Yedo, the abode of peace.

May this epistle be duly delivered into the hands of Our imperial friend and find him in good health and peace.

More than two centuries ago, by imperial order of Your Majesty's serene ancestor, the celebrated Gongen Ieyasu, permission was granted to the Dutch to come with their trading ships to Japan; and in virtue of this imperial order the Dutch, Our subjects, are still received and treated with all kindness in Japan, and, moreover, the leading men in that trade have been granted the honor of paying homage in person to Your Majesty.

This unfaltering good-will exhibited towards Our subjects fills Us with kindly feelings towards Japan and the desire to do all that is possible for the furtherance of peace within your imperial domain and for the prosperity of your subjects.

There never has been any correspondence between the sovereigns of the Netherlands and Japan.[1] There was no necessity, for commercial affairs and general news were communicated by the government which under Our control rules over Batavia and all the islands belonging to Our dominion in Asia.

But now We feel drawn to terminate this silence. There are important matters worthy of communication. They do not concern the trade of Our subjects with Japan, but the political interests of the Empire. They relate to matters worthy to be treated of between King and King.

The future of Japan causes us much anxiety. May We succeed in averting imminent disaster by Our good counsel.

From the communications that Our vessels bring from year to year to Nagasaki, Your Majesty will have learned that the King of England has lately been waging a violent war against the Chinese Empire.

The mighty Emperor of China, after a long but fruitless resistance, was finally compelled to succumb to the superior power of European military tactics and in the consequent treaty of peace agreed to conditions by which the ancient Chinese policy has undergone great alteration and whereby five Chinese ports have been opened to European trade.

When, thirty years ago, the war which had been waged in Europe was terminated, all nations began to work for peace.

The kings, remembering the lesson of the wise, opened to their subjects every channel for trade.

Populations were on the increase. The discoveries in machinery and physics rendered manual labor less necessary.

Commerce and industry rapidly increased everywhere, but, nevertheless, there was in many countries a lack of the necessities of life.

This was especially the case in mighty England, notwithstanding the wealth, the resources, and the enterprising spirit of the inhabitants. Restlessly seeking new channels for their trade, in their efforts to do so they sometimes came in conflict with foreign nations. The English Government by force of circumstances was then compelled to assist and protect its subjects by force.

In this way quarrels occurred between the English merchants and the Chinese officials at Canton. From that quarrel war arose. That war was fatal to China, for many thousand Chinese were killed, many cities were taken and devastated, many millions in treasure were yielded as indemnity to the conquerors.

Such disasters now threaten the Japanese Empire. A mere mischance might precipitate a conflict. The number of all sorts of vessels sailing the Japanese seas will be greater than ever before, and how easily might a quarrel occur between the crews of those vessels and the inhabitants of Your Majesty's dominion!

The thought that such quarrels may end in war fills us with solicitude. The wisdom that characterizes Your Majesty's Government will, we hope, know how to avert these dangers.

[1] It is pointed out by Greene, *op. cit.*, 115–19, that this statement fails to take account of correspondence early in the seventeenth century.

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This wisdom was already evident in the mandate, which was read by the Government of Nagasaki to the Netherland supreme official on the 13th of the 8th month of the year 1842,[1] ordering the kindly treatment of all foreign vessels. But is that mandate sufficient?

Only such vessels are mentioned as are driven onto the Japanese coast by hurricane or lack of provisions. What will be done with vessels that come for other and friendly reasons to visit the Japanese coast?

Are these to be repulsed by force or unfriendly treatment? Will quarrels arise? Quarrels lead to war, and war leads to destruction. Those are the disasters which We wish to avert from Japan. It is Our desire as a token of gratefulness for the hospitality enjoyed by Our subjects for more than two hundred years. The philosopher says: "In security, we must guard against danger; in peace, against confusion."

We have watched the course of events with serious attention. The intercourse between the different nations of the earth is increasing with great rapidity. An irresistible power is drawing them together. Through the invention of steamships distances have become shorter. A nation preferring to remain in isolation at this time of increasing relationships could not avoid hostility with many others.

We know that the laws of Your Majesty's serene ancestors were issued with a view rigorously to restrict intercourse with foreign nations. But (says Lao Tseu) "when wisdom is seated on the throne, she will excel in maintaining peace". When in the strict observance of old laws peace might be disturbed, wisdom will succeed in smoothing difficulties.

This, all-powerful Emperor, is Our friendly advice: Ameliorate the laws against the foreigners, lest happy Japan be destroyed by war. We give Your Majesty this advice with honest intentions, free from political self-interest.

We hope that wisdom will make the Japanese Government realize that peace can only be maintained through friendly relations, and that these are only created by commercial relations.

Should Your Majesty be desirous of receiving further information in this matter so important for Japan, then We shall be pleased, after receiving a letter from Your Majesty's own hand, to send an envoy to Japan—one who possesses Our entire confidence and who might be able to explain to Your Majesty all particulars which We have roughly outlined in this letter.

While We are anxious about the happiness and peace of far-off Japan, We Ourselves are weighed down with grief, for it has pleased Providence to summon recently Our beloved father, King William the First, who had retired from the care of political affairs four years ago, after bearing their burden for twenty-eight years. We are convinced of Your Majesty's sympathy in Our lawful sorrow.

We send this letter by one of Our men-of-war, hoping that the same will bring an answer from Your Majesty. In that vessel is Our portrait, which We wish to present to Your Majesty as a token of Our sincere friendship. That vessel will also bring certain presents for Your Majesty, as noted on the accompanying list. They are of little value and consist of reproductions of industry, art, and science flourishing under Our patronage in the Netherlands.

For the courtesy continually shown to Our subjects we offer you Our thanks. We further commend them to the protection of the Japanese Government.

We wish, Your Majesty, that the Almighty, who blessed your serene father with so long a reign, will permit Your Majesty to enjoy the same prosperity. May blessing, rest, and peace be granted to the great Empire of Japan for all time.

Given at Our Royal Palace at The Hague the 15th day of February 1844, in the fourth year of Our reign.

WILLIAM

The Minister of Colonies.
J. C. BAUD

[1] For a translation of the order of 1842, see Greene, *op. cit.*, 120; see also Gubbins, *op. cit.*, 81.

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[*Letter of the Emperor of Japan, July 4, 1845*]

Last year, in the seventh month,[1] there arrived in our port of Nagasaki, Province of Hizen, a ship with a representative from your noble Kingdom, bringing a letter from the King of the Kingdom.

The Governor of Nagasaki, Izawa, Prince of Hizen, received it and sent it to the city of Yedo. Our Lord himself read it.

The King of your noble Kingdom has, because commercial intercourse [with us] [2] has existed for two hundred years, made it appear probable that the advantage of our country will suffer.

He has brought before the eye lines [writing] of loyal, frank communication, the words of which are certainly most serious.

He has at the same time manifested a benevolence unique and exalted.

Our Lord, availing himself of this, is deeply moved by the sense of courtesy. He himself would take, on his part, a public reciprocal step, if bounds and limits to acting thus now had not been set [ever] since the founding of our ruling house by the founder of the same.

In earlier times no restriction existed with regard to relations of friendship and trade with overseas countries. Not until later was it determined by consideration [after mature deliberation] which countries may have confidential relations with us and which may maintain trade relations. Our confidential friendly relations are restricted to Chosen (Korea) and Loochoo; commercial relations, on the other hand, to your noble Kingdom and China. With anything outside these, we may not enter into a new relation.

Between your noble Kingdom and us commercial relations have always existed, but no confidential friendly relations. Intimacy and trade are two different things. A more extensive reciprocity, such as that now requested, would conflict with our ancestral laws. For these reasons we, delegated to do so, make known these sentiments to the noblemen in order to have communication thereof made to the King of the Kingdom.

The matter has the appearance of disrespect; but our ancestral laws are so strict in this regard that no other action can be taken. Please believe this.

As for the gifts of affection and etiquette [the presents], they too ought, strictly speaking, to be refused; but to go so far and refuse anything that has been sent with such cordial intent and from so far, that would certainly be disrespectful.

Therefore they are also now received, and as a token of gratitude some products of [our] country are offered, without attaching special value to them, as they are listed on the enclosure. Non-refusal is a favor conflicting in the highest degree with our ancestral laws, which, once established, must be obeyed loyally by posterity.

For the future, we beg once more that no further attempt be made [to see] whether such action cannot be taken [on the part of Japan]. For the second or third time, it could not be accepted. It is thus a favor which is not to be regarded as a reciprocal accommodation.

With respect to the letter of the noblemen, the answering of it is not a step of reciprocity either.

The commercial intercourse of your noble Kingdom [with ours] takes place in virtue of an ancient contract; and if no change takes place in this respect, that too is merely to maintain the ancestral laws scrupulously. Please make this known to the King of the Kingdom.

In regard to the faithful, friendly, and sincere sentiments of the King of the Kingdom, our Lord is also deeply impressed by them. What is written in his heart, he dares not manifest outwardly. Therefore [we], as authorized therefor, now draft these words. They are not adequate to express it, and a thousand times ten thousand credible assurances would still not be adequate.

With all respect for the noblemen of the Government of the Kingdom of Holland.

The 1st day of the 6th month of the 2d year called Koka (i.e., extension and reformation), being the 42d year of the sixty-year period (July 4, 1845).

The Council of State of the Kingdom of Nippon.

MASAHIRO, of the princely house of Abe, Prince of [the Province of] Ise.

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[1] August 14 to September 11, 1844.

[2] The brackets throughout this translation appear in the Netherlandish.

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TADAMASA, of the princely house of Makino, Prince of Bizen.
TADAYOSHI, of the princely house of Aoyama, Prince of Shimotsuke.
TADAYOSHI, of the princely house of Toda, Prince of Yamashiro.

A true copy.

A. L. WEDDIK,
Acting Under Secretary in the Ministry of Colonies.

The policy of occlusion did not wholly preclude communications of a diplomatic nature from Japan to the Western powers. Within the decade before the mission of Commodore Perry two such communications were made, and were received by the United States, through the medium of the Government of the Netherlands. These took the form of *notes verbales* from the Netherland Chargé d'Affaires at Washington, Baron François Mathieu Wenceslas Testa, addressed respectively to Secretary of State Buchanan and to Secretary of State Webster and dated April 14, 1847, and April 30, 1851 (D.S., 3 Notes from the Netherland Legation). Translations of those two *notes verbales* follow (from the French; not the translations in the archives volume cited):

[*Note Verbale of April 14, 1847*]

In 1843 the Government of Japan made a decree containing, in the first place, the declaration that the transportation of shipwrecked Japanese to their country by vessels other than those of the Netherlands or China would fail of its object because if those shipwrecked persons were transported by vessels belonging to other nations, they would not be received.

In the second place, that decree renews the warning that, as any unauthorized exploration of the coasts and islands of Japan is forbidden to Japanese by the laws of the Empire, explorations which foreigners might undertake are also contrary to those laws.

The Japanese authorities at the same time expressed the desire that the Government of the Netherlands would charge itself with communicating the contents of that decree to the nations which it might concern.

This is the first time, during relations of more than two centuries, that the Government of the Netherlands has been requested by that of Japan to make any political communication whatever to other governments.

The consideration that the Government of Japan could not, in the existing state of things, attain its object in a different way, has alone served to determine the Cabinet of The Hague to pass over the considerations which would naturally appear to it to be against a communication of this kind.

The reason why this was not done at once arises from the fact that the necessity therefor could not then be foreseen, because in 1843 there seemed to be no intention on the part of the Government of the United States to open relations with Japan, as now appears to be the case. It is this last consideration which has determined the Government of the Netherlands to comply with the desire made known by the Government of Japan.

The Chargé d'Affaires of His Majesty the King of the Netherlands at Washington has the honor to make the communication above mentioned.

[*Note Verbale of April 30, 1851*]

It is a matter of general public knowledge that the admission of foreign vessels to Japan is forbidden by the Government of that Empire.

Nevertheless, it was decided in 1842 that if such vessels are cast on the Japanese coasts by storms, or if they approach them for lack of provisions, with the purpose of asking for supplies, water, or wood for fuel, such articles will be furnished to them on their request.

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For fear, however, that that decision, dictated by feelings of humanity, might give rise to erroneous interpretations, the Government of Japan has had request made on that of the Netherlands to bring it to the knowledge of other states that the decision above mentioned does not derogate from and does not make any modification in the system of separation and exclusion adopted more than two centuries ago by the Japanese Government, and that, accordingly, the prohibition against exploration of the Japanese coasts is maintained without variation.

The Netherland Government has raised no objections to acceding to this desire, especially because the Government of Japan has no other means of making communications of that nature; and, pursuant to the orders of the Cabinet of The Hague, the Legation of the Netherlands has the honor to impart the foregoing to the Honorable Secretary of State of the United States for the information of his Government.

On January 27, 1852, Secretary of State Webster sent this brief instruction to the Chargé d'Affaires at The Hague, George Folsom (D.S., 14 Instructions, Netherlands, 95–96):

It is understood that the Dutch Government has in its possession charts of the Islands of Japan, and perhaps topographical descriptions of those Islands or of their coasts. This Government has immediate occasion to consult them. You will therefore make application to that Government for a copy of them and transmit them to the Department. Any expense which this may occasion, you will defray and charge in the accounts of the Legation.

Folsom was diligent in his quest for maps. The Netherland Government was quite willing, but unable, to supply any, for search in the Ministries of the Marine and of the Colonies disclosed that there were available only two,[1] published in 1847 by R. H. Laurie (D.S., 14 Despatches, Netherlands, No. 26, March 20, 1852, and enclosure). Folsom, however, had obtained at Leiden some maps of Von Siebold, regarding which he wrote as follows (*ibid.*, No. 25, February 24, 1852):

As it is likely several days may elapse before I receive an answer to my note, allowing time for the necessary searches to be made, I trust you will not find it amiss if I transcend my instructions, and forward by to-night's post copies of the maps attached to the latest great work upon Japan, that of Siebold, who went out in 1823 as physician to the Dutch Factory, and remained there several years in that capacity. He is a German, and now resides chiefly near Boppard on the Rhine. His work [2] is in the course of publication at Leyden; the narrative portion

[1] The titles of these are given as "The Coast of China, the Japan islands, & the Oriental Archipelago" and "The Coasts of India, Sumatra & Malaya". Maps of similar titles, by R. H. Laurie, of London, dated respectively 1849 and February 1, 1850, are in the collections of the American Geographical Society.

[2] This work of Philipp Franz von Siebold, entitled "Nippon, Archiv zur Beschreibung von Japan und dessen Neben- und Schutzländern . . .", was published serially in German at Leiden between 1832 and about 1858. The text of the original edition includes some fifteen paginations. A French translation of the parts then issued was published in 1838–40 at Paris under the title "Voyage au Japon, exécuté pendant les années 1823 a 1830 . . .", in two volumes, numbered 1 and 5. While this is doubtless the "French Edition" to which Folsom refers, it appears that Perry had access also to portions of the German text not included in the translation.

A facsimile reprint of the original German edition, comprising two volumes of text (vols. 1–2) and two volumes of plates (vols. 4–5), with a supplementary and index volume (vol. 3), was published at Berlin in 1930–31. In this *Neudruck* the pages of text have been assigned bracketed numbers from 1 to 1440, and the plates bracketed italic numbers from 1 to 382/3.

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is in German & French, of which only the first & fifth volumes have yet appeared. The Flora and Fauna are got up in an expensive style, with fine illustrations. The whole work as far as completed costs about fifteen hundred Guilders, or six hundred dollars. The only copy that has yet gone to the United States, so far as I can learn, was purchased last autumn by Jos. G. Cogswell, Esq. for the Astor Library in New York, which I had the pleasure of forwarding not long since to its destination.

I have been to Leyden this morning for the purpose of procuring the maps & a copy of the French Edition of the Narrative & Description of the Country, which I shall send this evening to Rotterdam for the London Packet of tomorrow and will write Mr. Miller [1] to forward them by the Liverpool Steamer of the 28th instant. There are in all eighteen maps, some of which are in fact charts, as they give the soundings upon portions of the coast, and are therefore precisely of the character required. It is, however, possible that the Government may already possess copies of them, in which case I should wish to have these sent to the Geographical and Statistical Society of New York, as a gift, without any charge to the Government. A list of these maps is herewith enclosed.[2]

It is possible that Mr. Siebold's agent at Leyden may not have furnished me with quite all the maps belonging to the work; they are usually put up together in the form of an Atlas, but having no copy of the Atlas, he collected all the maps he could find in his possession, and I took them away in some haste to forward them in season for the next steamer. If there should be any omissions, I will have them supplied as soon as possible.

The maps and charts obtained by Folsom were duly transmitted to Commodore Perry (D.S., 14 Instructions, Netherlands, 96–98, June 14, 1852); and the British Admiralty, at the request of Vice Admiral Sir George Seymour, Commander-in-Chief of the North American and West India station, presented to Commodore Perry "four books and eighty sheets of charts, of the latest publications, all descriptive of the parts of the world to which I am bound"; these were received just before Perry left the United States on his mission (see serial 751, pp. 11–12).

Various authors have written to the effect that the Government of the United States paid $30,000 for charts used by Commodore Perry, obtained chiefly in the Netherlands (e.g., Griffis, *op. cit.*, 294; Foster, American Diplomacy in the Orient, 147); the expenditure of any such great sum for maps is inherently improbable, and no record has been found to evidence it;[3] the maps of Von Siebold which Folsom procured cost fifty guilders or, say, twenty dollars (D.S., 14 Despatches, Netherlands, No. 33, July 20, 1852).

[1] John Miller, United States Despatch Agent at London.

[2] The list is of fifteen items; reading it with Folsom's despatches Nos. 25 and 26, one may deduce that he sent eighteen sheets of Philipp Franz von Siebold's Atlas von Land- und Seekarten vom Japanischen Reiche (1851). In the Division of Maps of the Library of Congress, without any record of provenance, is an unbound portfolio of eleven sheets (including the title sheet) of that atlas; those sheets correspond to ten of the items listed by Folsom; it may be that they are, to that extent, the very sheets transmitted by Folsom and subsequently used by Commodore Perry.

[3] Perhaps this fable grew from the fact that in 1853–54 the American Association for the Advancement of Science took action to memorialize Congress for an appropriation of $30,000 deemed to be required for "a judicious and efficient beginning" of "establishing a complete, thoroughly-organized, and liberally-sustained Geographical Department of the Congress Library" (see Norton's Literary Gazette, April 15, 1854, p. 189).

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The instruction last cited (June 14, 1852) includes these paragraphs:

> We have now another request to make of that Government. It is desirable that the Dutch Superintendent at Decima, in Japan, should be instructed, either directly from the proper authority in Holland, or by the colonial authorities in Batavia, to do any thing which may be in his power towards promoting the objects of Commodore Perry's visit to that Empire. It would of course be preferable that this instruction should emanate from the metropolitan authority, and if that should consent to give it, a duplicate of the instruction may be sent hither, for the Commodore to take with him. It would be desirable that the duplicate should not be sealed; but, if the party from whom it may emanate should object to this, you will endeavor to obtain a copy or translation of the instruction, and will forward it to the Department.
>
> In making the application, you will assure the Netherlands Government that, in sending a naval force to Japan, we have nothing in view contrary to the interests of those Hollanders who have hitherto traded thither; but that, on the contrary, if our wishes in regard to the instruction shall be complied with, it is quite probable that their interests will derive material advantage therefrom. If, however, a compliance with our request shall be refused, or, if granted, there shall be any such reserve or ambiguity in the instruction as may tend to render it valueless, Commodore Perry will not deem himself under any obligation to protect or to regard the interests of Hollanders in Japan in any proceedings which he may adopt for the purpose of carrying out the views of this Government.

Folsom, accordingly, by note of July 2, to the Netherland Minister of Foreign Affairs (Herman van Sonsbeeck), asked "that the Opperhoofd of the Factory at Dezima be authorized to do anything that may be in his power towards promoting the objects of this amicable visit to the Japanese islands. Should the government of the Netherlands be pleased to grant instructions to this effect to its agent or resident in Japan, it would be desirable that Commodore Perry, the commander of the expedition, should have an open copy of them to take with him, to guard against any accident in the transmission of the document" (D.S., 14 Despatches, Netherlands, No. 31, July 4, 1852, enclosure); and he was shortly informed by the Minister of the Colonies (Charles F. Pahud) "that as there is no official communication directly between the government here and the Opperhoofd of the Dezima Factory, who is a subordinate of the Governor General of the East Indian Colonies, he proposed to send directions to the latter functionary to instruct the Opperhoofd in the manner desired, and to despatch a government vessel to Japan for the express purpose of carrying the instructions to Dezima. This, he remarked, would be necessary to prevent a long delay, as the only ship sent to Japan sailed annually in June. He also added that the appearance of a government ship would give greater importance to the instructions, and produce a more decided effect in Japan. A copy of the letter of instructions to the Governor General will be sent to you, instead of those to the Opperhoofd, which from the nature of the case it will be impossible to receive in season for the Expedition, but which Commodore Perry will probably obtain at Batavia, should he visit that emporium of Dutch commerce in the East" (*ibid.*, No. 32, July 14, 1852). The written answer to Folsom was this note of the Minister of Foreign Affairs, dated July 19 (*ibid.*, No. 33, July 20, 1852, enclosure, translation from the French):

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I have received your note of the 2d of this month regarding the expedition which the Government of the United States proposes to send to Japan in order to endeavor to bring about some modifications in the system of exclusion adopted by that Empire in respect of foreigners.

That expedition, which, as you were good enough to inform me at the outset, will be of a wholly pacific nature, seems indeed to promise results very advantageous to all nations interested in the commerce of the East Indies and consequently to the Netherlands in particular.

Moreover, you expressed in the name of your Government the request that the Chief of the Netherland factory at Deshima be authorized to cooperate with all the means at his disposal for the successful attainment of the object of the wholly amicable visit to be made to the Japanese islands by the American squadron.

The Government of the King having taken cognizance of this interesting communication, attaches the greatest value to the mark of noble frankness which it has received from the Cabinet of Washington and to the sentiments of esteem and friendship which animate that Cabinet, as well as to its solicitude for the commercial relations of the Netherlands.

Accordingly, this Government feels a very lively gratitude which it believes cannot be more suitably manifested than by responding with equal frankness to the overtures of the United States of America and by cordially supporting near the Government of Japan, by all the pacific and persuasive means at its command, the generous and benevolent steps of the United States.

The Government of the King has therefore gladly authorized the Governor General of the Netherland possessions in the East Indies to forward the necessary instructions in this sense to the Chief of the Netherland factory at Deshima and, in case the expedition which regularly goes once a year from Java to Japan should have already left, to send at once a special ship to carry those instructions.

As the said instructions must emanate from the Governor General, I am not in a position to communicate them to you literally; but I trust that the enclosed copy of the letter[1] addressed to the Governor General at Batavia will serve as an equivalent.

The Government of the King sees with all the more satisfaction the noble steps of the United States of America, and it will support them all the more willingly, as it thus continues to follow the path of its late King, William II, who in 1844 earnestly urged upon the Emperor of Japan the necessity of admitting into his ports the ships of other nations and of mitigating the rigor of the laws against foreign commerce.

That royal letter, accompanied by a portrait of His Majesty and other gifts, was taken to Yedo by a vessel of war; and as I assume that the Government of the United States will desire to take cognizance textually of the contents of the letter in question as well as of the response addressed by the Magnates of the Empire of Japan to the Government of the Netherlands, I have the honor to transmit to you herewith copies of each of those papers.[2]

As I am wholly persuaded that the new exchange on this occasion of courtesies between the two Governments will make even stronger the ties of friendship and harmony which have existed for so many years between the respective states, it remains to me only to express the most sincere wishes for the happy issue of an expedition to be made for a praiseworthy and generally approved object.

In the speech delivered by the King of the Netherlands at the opening of the session of the States-General on September 20, 1852, he made reference to the expedition of Commodore Perry and said: "Invited by a friendly power, and in accordance with the policy

[1] A translation of an authenticated copy of that letter of July 17, 1852, from the Minister of the Colonies, is with the despatch last cited.

[2] An English translation of the letter of the King of the Netherlands, an authenticated copy of a Netherlandish translation of the letter from the Government of Japan, and an English translation thereof, are with the despatch last cited; retranslations from the Netherlandish are printed above.

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adopted [by the late King] in 1844, I have promised my good offices in favor of an attempt to obtain some modification of the system of exclusion still maintained by the Japanese Empire" (D.S., 14 Despatches, Netherlands, No. 35, September 23, 1852). More than a month earlier, under date of August 13, 1852, a statement[1] communicated by the Department of Colonies was published in Nederlandsche Staats-Courant (No. 192, August 14, 1852), the official journal of the Netherlands. A translation of that statement follows (not the translation enclosed with the despatch of Folsom last cited):

The proposed expedition of the United States of America to Japan has recently given rise to repeated statements in the newspapers on Japanese affairs, and also with respect to the Netherlands. These articles were, however, in most cases incomplete or inaccurate, so that a brief outline of the occurrences, with their context, is not considered superfluous.

It is well known that in 1844 a letter[2] from His Majesty King William II to the Emperor of Japan was taken thither by the Netherland frigate *Palembang*. The war between Great Britain and China was ended by the treaty of August 29, 1842,[3] and the latter Empire was opened to general trade. Towards the end of that same year Japan had mitigated her earlier strict laws for the unconditional keeping off and driving away of all foreign vessels, by taking measures for a more humane treatment of such foreign ships as might get into difficulties on the Japanese coast because of hurricanes or shortage of provisions. In view of the circumstances and of the long-continued and privileged admission of Netherlanders to trade with the port of Nagasaki, the Netherland Government considered that the time had come and that it was called upon to direct to that of Japan a solemn warning, from prince to prince, against the increasing dangers of the system of isolation maintained there for over two centuries, and advice to mitigate it. The above-mentioned royal letter had that purpose. The answer[4] to it, given the following year by the Japanese Government, contained a courteous but firm declaration that no extension could be given to the trade with foreign nations, on the ground of the ancient laws, and thus it intended to maintain the regime of seclusion, but at the same time it showed that the King's letter had made a deep impression on the Emperor of Japan.

Conscious of having done what it was called upon to do and of having performed a duty toward Japan, the Netherland Government stopped for the time being with that statement. Nevertheless, the King's letter has remained the foundation for our policy toward the Japanese Empire. The Netherland Superintendents at Deshima were ordered to act in that spirit when occasion offered

[1] On October 19, 1852, Folsom wrote (D.S., 14 Despatches, Netherlands, No. 36) that he had received a letter from Commodore Perry "not long since" and that with his answer, addressed to the Department of State, he had sent "copies of a Journal containing the answers of the minister of the Colonies to the interpellations addressed to him on the subject of the arrangement made with our government relative to Japan. The minister's statements on this occasion were substantially the same as he had previously made in the official article published in the Staats Courant, a translation of which I transmitted to Mr. Webster with my last Despatch". That communication from Folsom must have been received by Commodore Perry before he left the United States on November 24, 1852.

Both the interpellations and the answers of the Minister of the Colonies are printed in the supplement to the Staats-Courant containing the acts of the States-General of that period (Handelingen van de Staten-Generaal, 1852–1853, Bijblad tot de Nederlandsche Staats-Courant, session of September 28, 1852). The answers, as Folsom intimates, disclose nothing more than was made known by the statement of August 13, 1852, to which the Minister referred in the course of his remarks.

[2] Of February 15, 1844, printed above in translation.

[3] 30 British and Foreign State Papers, 389–402.

[4] Of July 4, 1845, printed above in translation.

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and to present a liberal and pacific line of conduct toward the Japanese Government, avoiding the very appearance of the possibility that self-interest might be among the things actuating our trade. This policy of admonition and advice, coupled with the maintenance of a benevolent and friendly attitude toward the Japanese Government, has not yet, to be sure, led to the desired outcome, but its influence on the Japanese authorities is unmistakable in the assistance to and the care of a number of shipwrecked persons and the observance of consideration and the forms of courtesy, from which they appear, though persisting in the regime of isolation, to wish to avoid conflicts in the numerous contacts with foreign ships.

In the year 1846 information was received in this country of a request made of our factory at Deshima by the Japanese Government that publicity be given an edict promulgated in Japan in October 1843, decreeing that Japanese who had been shipwrecked could be returned to their native country only by Netherland or Chinese ships, and that the laws of the Empire, just as they prohibit the Japanese from making surveys of their own accord of their coasts and islands, likewise oppose the making of such surveys by foreigners. Although the possibility was noted that the transmission of such a communication might make it appear as if the Netherlands wished to support the Japanese system of isolation, we were led to decide to make this known as requested, to the Cabinets of London, Paris, and Washington, by the consideration that by withholding the edict we might involuntarily be the cause of unfortunate conflicts, while for the present Japan has no other means available for making such a communication.

A more detailed notification of the same sort was given to other sea powers in 1851 by the Netherland Government at the request of the Japanese Government. It went so far as to declare that the amendment of 1842 to an order promulgated in 1825 for the repelling and driving away of foreign craft which might wish to stop on the Japanese coasts, had made no change in the system of isolation and exclusion exercised for more than two hundred years continuously.

Since [that time], attention has begun to be fixed more and more on the plans of the United States of America to make efforts to secure a modification of the system. In that case the Netherlands should not be left behind. Their ancient relations with Japan have made it their duty to leave nothing undone that could bring the Government there to a better understanding of their real significance. The American projects provided a suitable opportunity for repeating emphatically our direct efforts toward that end. Early this year the Indian Government was given the task, in the King's name, of taking new steps in a suitable and dignified manner, in harmony with and following up those of His Majesty the late King William II. In the meantime the United States Government had not been left in ignorance of what had been done by the Netherlands as early as 1844. That Government respected our policy with regard to Japan, but very recently it made application to the Netherland Government to lend its official cooperation, through the Superintendent at Deshima, in furthering the purpose of the peaceful and friendly mission of Commodore Perry, designated to sail for Japan at the head of a United States squadron, for the purpose of attempting to bring about a modification of the regime of exclusion existing there.

Such cooperation in a non-hostile manner, conforming entirely with the policy followed recently by the Netherlands, was agreed to without hesitation. In this connection full information was given to the Cabinet at Washington regarding the correspondence of 1844 with Japan. Instructions were sent to the Governor General of the Netherlands Indies to furnish the Netherland Superintendent in Japan with the necessary instructions, by a ship sent specially for the purpose, if necessary, in order that he might aid, as far as possible, in the peaceful aim of the United States mission.

It is to be hoped that the measures mentioned above may lead to the attainment of the aim for the accomplishment of which the Netherland Government has always striven.

There was, in fact, no cooperation between Commodore Perry and the Netherland Superintendent at Deshima; the American squadron did not go to Nagasaki. Perry was suspicious of the Netherland Government; while on his way to the Far East he wrote (in a despatch of

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December 14, 1852, quoted below) of the "discreditable machinations" and "misrepresentations of the Dutch", without hinting at their nature;[1] and the Governor General of the Netherlands Indies, Duymaer van Twist, also thought that cooperation might be inadvisable; he wrote the following letter to Commodore Perry from Purworejo, Java, on September 22, 1852 (received by Perry in the following April, upon his arrival at Canton; translation from serial 751, pp. 20–21):

I have been informed by my Government of the request received from the Government of the United States by letter from its Chargé d'Affaires at The Hague bearing date the 2d July last, as also of the promise made in consequence thereof by the Government of the Netherlands to direct the Chief of the Netherland factory at Deshima to contribute as much as may be in his power to the success of the entirely friendly visit which an American squadron is about to pay to the isles of Japan.

I have the honor to inform you that the newly appointed Chief of Deshima, Mr. J. H. Donker Curtius, late member of the Supreme Court of the Netherlands Indies, recently departed for Japan, has been furnished with instructions in view of urging upon the Japanese Government a change in its system of policy of exclusion equally in favor of all nations who have hitherto lived in peace with the Empire of Japan.

Formal instructions, however, to promote especially the efforts of the Government of the United States to effect this object in a peaceful and friendly manner have not, and could not have been, given to the said Chief, because at the time of his departure nothing was known officially, at least by the Government of the Netherlands Indies, with respect to the intentions of the American Government.

When the communication of my Government before mentioned had been received, I put the question to myself, whether it would be necessary or useful to dispatch again one of His Majesty's men-of-war to Japan for the purpose of transmitting orders to the Chief of the factory at Deshima according to the promise of my Government.

After mature deliberation I came to a negative answer of the said question, more especially because the sending of a Netherland man-of-war in the present time and circumstances might raise suspicion with the Japanese Government which probably would exercise an unfavorable influence upon the negotiations in case such negotiations could be opened.

I deem it my duty, however, if you think it convenient to avail of the promise made by the Government of the Netherlands, to furnish you the opportunity thereof, and for that purpose have the honor to forward herewith a despatch addressed to the Netherland Chief at Deshima, which I ask you to be pleased to transmit to him in case you should desire to procure his cooperation; the despatch containing the necessary orders to comply with your demand in conformity with what has been promised.

I beg to remark, in view of the object at present contemplated by both our Governments, that in case the Netherland Chief of the factory at Deshima should have succeeded in opening negotiations with the Government of Japan, it is not

[1] There is no reason to think that Perry had any basis for his phrases other than his inferences from the reports forwarded by Folsom from The Hague, which have been quoted or described. Compare the final sentence of the relevant paragraph of the presidential message of December 6, 1852, quoted above.

The tone of the introduction to the Narrative is consistently critical of the Netherlands (see, e.g., I, 63–64, 69).

In Perry's despatch No. 11, of May 6, 1853, from Shanghai, it is said (in a phrase omitted from serial 751, p. 19) that it was "a well understood fact, that the Japanese are kept constantly informed by the Dutch of our movements, and in a way, it is supposed, not calculated to calm the suspicions or the fears of a Government, to which they (the Dutch) seem proud to remain subsidiary"; and see also the excerpt from the unprinted confidential despatch of August 3, 1853, which appears below toward the close of the section of the editorial notes headed "First Visit to Japan".

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unlikely that any proof of cooperation between America and Holland would prejudice these negotiations, as you are aware that the American expedition to Japan has not always been represented to be of a wholly friendly and peaceful character.[1]

The nature and terms of the proposals made by the Netherland Government to the Government of Japan, spoken of as "direct efforts" and "new steps" in the antepenultimate paragraph of the quoted official statement of August 13, 1852, were not at the time fully disclosed. Pursuant to orders issued at The Hague in the spring of 1852, the Governor General of the Netherlands Indies wrote (June 25, 1852) that it was his wish that the Japanese Government would select a representative to confer with the newly appointed Superintendent at Nagasaki, Jan Hendrik Donker Curtius; the latter was furnished with a draft treaty and full powers; while the letter from the Governor General was accepted, no Japanese Plenipotentiary was appointed; Donker Curtius then wrote (November 2, 1852) to the Governor of Nagasaki, transmitting the draft with explanatory comment; thereafter (seemingly in the autumn of 1853) there were conferences between Donker Curtius and an appointee of the Governor of Nagasaki; and while no treaty was made, the communications and the Netherland draft were probably of some influence during the discussions and negotiations carried on by Commodore Perry in July 1853 and February–March 1854.[2]

In the form of a "connected account" bringing the story up to October 26, 1854, an official report of the exchanges with Japan was published in Nederlandsche Staats-Courant, No. 39, February 14, 1855, together with the draft treaty, the "note of explanation", and the text in English of Perry's Treaty. A translation of the report, draft treaty, and "note of explanation" follows (not the translation in D.S., 16 Despatches, Netherlands, No. 50, February 26, 1855, enclosure):

In virtue of permission granted by the King through Cabinet rescript No. 66, of February 13, 1855, the following article is made public.

TO THE KING:

Having submitted to Your Majesty for preliminary cognizance the documents on Japanese affairs which were recently received here, I now therefore propose to

[1] See the comment on these concluding words in Narrative, I, 69.

A communication was addressed in the summer of 1852 by the outgoing and incoming Superintendents of the Netherland factory at Deshima to the Governor of Nagasaki which conveyed the rumor that the expedition of Commodore Perry would proceed in 1853 and that preparations had been made for landing a force if necessary. That communication is reproduced in *Kai-Koku Kigen* (The Commencement of the Opening of the Country), by Count Katsu Awa (Gubbins, *op. cit.*, 52–54).

[2] There is no evidence that Perry, before his mission ended, knew of the terms of the draft or even of its existence; but the quoted letter of the Governor General of the Netherlands Indies dated September 22, 1852, had informed him that the Netherland Government was seeking to open negotiations with Japan.

There are some obvious similarities between the clauses of the draft and Perry's Treaty, as well as some noteworthy dissimilarities; for comparisons which are respectively friendly and hostile, see Nitobé, Intercourse between the United States and Japan, 55–57, and Narrative, I, 63–69.

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give Your Majesty a connected account. The Japanese Government has taken the first step on the road toward a mitigation of its regime of isolation, and under the measure taken the Netherlands are included also. That circumstance makes it an agreeable task for me to make clear the persistent and disinterested efforts which the Netherland Government has applied to attain this aim, and to enter upon a detailed narration of the measures which have more directly led to the result that has been attained.

The letter [1] addressed to the Emperor of Japan in 1844 by His Majesty the late King William II was the starting point and the foundation of our policy in this matter. The letter referred to the opening up of China in consequence of the war carried on there. It warned against the dangers connected with the strict system of isolation, in view of the extension of navigation in Japanese waters, the reduction of distances by steam power, and the general development of trade and industry in Europe. It recommended relations of amity and trade as the best means of avoiding clashes. Lastly, out of gratitude for the admission of the Netherlanders to trade at Nagasaki for more than two centuries, it gave the disinterested advice to mitigate the laws against foreigners, with an offer to send an envoy to give further information if the Emperor might so desire. The letter, accompanied by presents from the King, was carried to Japan by the naval frigate *Palembang*.

The answer,[2] given in 1845, evinced the impression that the royal words had made, but contained, in courteous phrases, the decisive declaration that the ancient laws in Japan did not permit any extension of intercourse with foreign nations. That answer was written, in the name of the Emperor, by the Japanese State or Government Council, and addressed to the Magnates of the Netherlands, with the request that the contents be made known to the King. Gifts from the Emperor, in return, followed, and the information was given that a letter directly from him would have been contrary to Japanese institutions.

In consequence of this outcome, the Netherland Government felt that it would have to take for the present a waiting attitude with respect to Japan, while maintaining the principles contained in the King's letter. Our Superintendents at Deshima were expressly ordered to observe these principles without variation and to advocate them, and to refrain strictly from all acts which might violate our unselfishness or even cause it to be suspected.

This policy of waiting, counsel, and incitation, together with the assiduous cultivation of a friendly attitude toward the Japanese Government, was evidently not without influence on its line of conduct toward foreigners. Assistance and care were given to shipwrecked persons, and it was evidently desired to avoid, through consideration and forms of courtesy, offensive contacts, in view of the increasing number of foreign ships arriving. On our side, too, we did not hesitate to do everything possible in order to avoid unfriendly contacts of that nature. In 1846 we received in this country a request of the Japanese Government to give publicity to an edict promulgated there, stating that Japanese who had been shipwrecked might be returned to their own country only on board Netherland or Chinese ships, and that the laws of the Empire, just as they forbid the Japanese to make surveys, independently, of their [own] coasts and islands, also stand in the way of such surveys by foreigners. It was anticipated that the making of such a communication might cause us to be suspected of wishing to lend support to the regime of isolation existing in Japan. But the Empire possessed at that time no other means for the transmission of such communications, and the withholding of it might have produced fatal clashes. The notification requested was consequently given by the Netherland Government to various sea powers, as well as a more detailed one of the same nature in 1851.

The reports regarding the fitting out of an expedition to Japan by the United States of America appeared in the meantime to have more and more foundation. It was about to be accomplished, and was intended to make an attempt to secure the abolition of the regime of absolute exclusion. The Netherland Government considered that the time had come to repeat its former attempts at the same object and again to take direct steps for that purpose. The American projects

[1] Of February 15, 1844, printed above in translation.
[2] Of July 4, 1845, printed above in translation.

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afforded a convenient opportunity for bringing the Japanese authorities to a better understanding of their essential interests. In virtue of Cabinet rescripts L. A[5] of March 22 and N[6] of April 9, 1852, the Indian Government received from Your Majesty the necessary orders, and the American Government was informed regarding the tenor of the letter from His Majesty the late William II.

In compliance with those orders the Governor General of the Netherlands Indies wrote, under date of June 25, 1852, a letter to the Governor of Nagasaki, suggesting that a trusted and distinguished person be designated by the Japanese Government for the purpose of entering into detailed discussions and negotiations with the newly appointed Superintendent, regarding the measures to be indicated by the latter for protecting Japan from the dangers which threatened her. At the close of his letter, the Governor ventured to speak of the possibility that we might be compelled to leave Japan if hostile clashes should be the consequence of persistence in the exclusion of foreign nations. The Superintendent designated, J. H. Donker Curtius, LL.D., was entrusted with the delivery of this letter and was given authority to act on the bases of the draft treaty furnished him. I have the honor to place before Your Majesty a copy of this draft treaty again, with the explanatory note belonging thereto. It indicated the way for the attainment of the objective, with due allowance for Japanese ideas and institutions. The letter from the Governor General and the treaty drafted were, moreover, to serve Mr. Donker Curtius as guides particularly if he should be consulted on Japanese-American affairs.

These measures had just been taken when the Chargé d'Affaires of the United States here inquired, by letter of July 2, 1852,[1] for his Government, whether the official cooperation of the Netherland Superintendent at Deshima would be given for the promotion of the objects of the entirely friendly visit which was to be paid to the Japanese islands by a squadron under Commodore Perry, with the statement that the purpose of this mission was to make efforts with a view to bringing about some relaxation in the system of the exclusion policy maintained up to the present by the Japanese Government. This cooperation in a peaceful way, entirely in concordance with the policy followed by the Netherlands and the latest instructions given by Your Majesty, was immediately promised, and the Indian Government was instructed to act accordingly. The instructions in this sense to the Superintendent were entrusted to Commodore Perry himself, for the sake of speed and in order to avoid attracting attention in Japan by the sending of a special ship, so that they could be delivered when the required services were called for. Full information was given to the American Government, pursuant to the request made, regarding the correspondence conducted with Japan in 1844–45.

The new steps taken by Mr. Donker Curtius in compliance with the orders of the Netherland Government could find little acceptance at first. The letter from the Governor General was indeed received, but the Japanese Government abstained entirely from making the desired designation of a prominent and trustworthy person for further discussions and negotiations. But it did give indications of attaching much value to further information. So Mr. Donker Curtius finally decided rightly that the matter should not be sacrificed for the sake of form. Hence he combined the various points of the draft treaty with the necessary explanations in a letter which he wrote to the Governor of Nagasaki under date of November 2, 1852. In it he suggested the principles as acceptable in the interest of Japan and also that action be taken in the spirit thereof with respect to the anticipated proposals of the United States, ending with the words: "His Majesty the King of the Netherlands expects that the peace of the Japanese Empire can be preserved if the request of the President of the United States of America is answered in this way by the Government of Japan." But for the time being this communication also had no other result than repeated questions and requests for explanations, which showed, however, that the letter formed the subject of serious consideration.

Under those circumstances, the American squadron under Commodore Perry anchored in the Bay of Yedo in the month of June [2] 1853. It did not appear off Nagasaki, so that the Superintendent at Deshima had no communication

[1] Cited and quoted in part above.

[2] On July 8, 1853.

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with it. Shortly afterward a Russian squadron under Admiral Putiatin cast anchor in the Bay of Nagasaki, on August 22. Our factory provided it with the desired fresh provisions during a tolerably long stay. The Admiral was the bearer of two letters from the Russian Imperial Chancellor, one for the Governor of Nagasaki and the other for the Japanese Imperial Council. Both were received and the latter handed over at a formal reception. The constant requests of the Japanese authorities for help and enlightenment with regard to their contact with these squadrons kept the Superintendent very busy. But confidence in and gratitude towards him were the fruits thereof. In addition, the sight of so many sailing vessels and steamships of different nations had evidently made a deep impression on the Japanese and their Government. The interest aroused in navigation was shown by the many and varied bits of information for which Mr. Donker Curtius was asked over and over, and particularly with regard to the steamships, to which special attention was paid.

Late in August the death of the Emperor [*Shogun*] of Japan was proclaimed. The event led to the intervention of the Superintendent being called for, for the purpose of requesting the United States Government, through his Government, to postpone the return of the squadron under Commodore Perry, which was set for the following spring. He had brought a letter from the President of the United States, but the answer could not be ready by the time of his return, because of the mourning over the death of the Emperor and the many operations and formalities connected with the transfer of sovereignty. Mr. Donker Curtius declared himself ready to transmit that request to the Netherland Government, and at the same time to the Governor General of the Netherlands Indies, in order that it might reach Commodore Perry as directly as possible. In so doing he expressed doubt, however, whether the notice could reach its destination in sufficient time, and whether, even if it did, the commander of the fleet could postpone his return without having received an order from his own Government to do so.

The demise of the Emperor did not, however, prevent the Superintendent from receiving from the Japanese Government, not long afterward, a decisive proof of interest with respect to his letter dated November 2, 1852. He was, in fact, requested to hold conferences with an Imperial Commissioner for Foreign Affairs designated for the purpose by the Governor of Nagasaki. At a number of interviews the subject of the letter was discussed exhaustively, both from the standpoint of statecraft and that of economics. Mr. Donker Curtius referred again and with emphasis in these conversations to the letter from His Majesty the late King William II. He cited China as not having eliminated the exclusion of foreigners, with the exception of the ports that were opened. He took pains to recommend, with moderation and with the citation of examples, a change in the existing system. The answer always was that Japanese law does not permit any trade with foreign nations and is unalterable. But that the conversations had left the desired impression is shown by the remarkable official communication from the Governor of Nagasaki, after the conclusion of the conferences mentioned above, made to the Superintendent on November 9, 1853, and reading as follows: "The Governor expresses his thanks for the opinion expressed by you, which you, after being invited repeatedly to the Government building, presented satisfactorily, and also for the trouble to which you will be put today. You must have understood well what has already been stated by him regarding inability to transgress or amend our laws and inability of trade relations with foreign countries to exist. It is true that what you have explained regarding the places for storing coal and the need by foreign nations of provisions and places of refuge in case of storm does not appear unacceptable.[1] The Governor would be disposed to act promptly on these matters, but because of many activities in connection with the succession to the throne, the deliberations on the matter mentioned cannot take place, because it will not be sufficient if the Governor alone deals with these matters in writing. So he believes that he must make it known in person to the High Government upon his return to the Court at Yedo this coming fall."

Such was the state of affairs according to the reports from Deshima dated November 15, 1853, which were received here at home from the Indian Govern-

[1] Compare Articles 2 and 10 of Perry's Treaty.

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ment in February 1854. The Governor General had also complied with the request of the Japanese Government to inform Commodore Perry by letter of its desire for postponement.

The Netherland Government was convinced from these reports that the course begun should be followed. A letter was therefore sent to the Indian Government by Your Majesty in that sense, in compliance with a Cabinet rescript, letter P[4], of March 20, 1854. At the same time the recommendation was added that the conclusion of the treaty was not to be lost sight of, and that care should be taken in the meantime that foreign nations did not secure any privileges from which the Netherlands might be excluded, on the one hand, and, on the other hand, that continued pressure should be exerted, in the interest of Japan, for a modification in the system of exclusion and surveillance with regard to foreigners. An electro-magnetic telegraph was sent, to be offered to the Emperor of Japan in Your Majesty's name. With a view solely to the possibility of impending occurrences of importance in the Japanese Empire, the Governor General was given the duty, in virtue of Cabinet rescript, letter M[6], of April 17, 1854, of sending a steam warship to Japan, in addition to the merchant vessel ordinarily sailing in the month of June, in order that the quickest reports might be received of important occurrences there, and to serve as a support and aid to the Superintendent, at whose disposal the vessel should be placed. The Indian Government assigned for this duty Your Majesty's steamship *Soembing*, commanded by Lieutenant G. Fabius. The instructions for the Superintendent were sent by the merchant ship. The *Soembing* sailed for Japan on July 25, 1854, having on board the electro-magnetic telegraph, and returned to the harbor of Batavia on the following November 15. The Governor General immediately sent the commanding officer hither by the overland route and entrusted to him the carrying of the despatches regarding Japanese affairs, so that the highest authorities could be informed on further measures to be taken. The documents brought by Mr. Fabius are those which I have mentioned at the beginning of my present report. They provide the material for completing the above survey, which broke off with the state of affairs in Japan on November 15, 1853.

The Russian squadron left the harbor of Nagasaki on November 23, 1853, but returned thither early in 1854. Repeated meetings of Admiral Putiatin with the Japanese authorities then took place. After having been absent once more from the 5th of February to the 20th of April, the Admiral put to sea again with his squadron on April 26, without having returned again, but not without having thanked Mr. Donker Curtius in writing for his services. Matters had evidently not gone as far as the signing of a treaty with Admiral Putiatin. The American fleet had also entered the Bay of Yedo again in February 1854. The negotiations initiated by Commodore Perry led to the conclusion, on March 31, 1854, of an agreement between the United States of America and the Japanese Empire. I have the honor to transmit a copy of the agreement herewith.

Continued consultation and visits from Japanese high officials and magnates testified in the meantime to closeness to and liking for Mr. Donker Curtius and interest in the chemical and physical experiments of Dr. van den Broek, the physician at Deshima. Among other things, the latter had undertaken to set up there a miniature electro-magnetic telegraph, the working of which had aroused the astonishment of the Japanese. Later, he also made a wooden model of a steam engine in cross-section, which attracted the attention of all. Unmistakable also was the approach by the Japanese to the taking of measures for promoting a knowledge of the Netherland language among the interpreters. The employees of our factory also worked willingly in this direction, by giving instruction in Dutch during the past winter to several young interpreters and improving their knowledge of our language.

The arrival of the trading ship on July 29, 1854, placed the Superintendent in possession of the instructions from the Indian Government, issued in accordance with the latest notices received from Your Majesty. On the following day Mr. Donker Curtius took the steps ordered, by means of a letter to the Governor of Nagasaki, in which he reported at the same time the coming arrival of the *Soembing*. The letter was sent to Yedo immediately, and the arrangements requested for the reception and stay of the steamship were made as desired. The *Soembing* arrived on August 21 and steamed into the inner harbor on the

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following day, decorated with ceremonial flags. The electro-magnetic telegraph had reached its destination, not without being considerably damaged. Fortunately, full repairs were made under the skilled supervision of Dr. van den Broek. In the meantime, the Superintendent, by a communication of August 24, officially gave notice to the Governor of Nagasaki of the arrival of the present.

The *Soembing* had appeared at a favorable moment for satisfying the great interest of the Japanese in navigation and steam engineering. Pursuant to a request made at once by the Governor of Nagasaki, the commanding officer also declared himself ready to give information and instruction to Japanese officers, officials, machinists, soldiers, craftsmen, and sailors regarding shipbuilding, steam engineering, the steering of European ships, ironwork, lathes, drill with rifles, cannon, and sails, etc., during the stay of the *Soembing*. The instruction began as early as August 26 and was given from that time on almost every day, sometimes on shore and sometimes on board, to a large and constantly increasing number of persons present for that purpose. The commanding officer, the staff, the petty officers, and the majority of the crew engaged in this untiringly. It was not easy work to treat of such subjects through interpreters, but the eagerness of the Japanese to learn and their intelligence merited the highest praise. They were soon well acquainted with all our nautical terms, as well as those for the artillery, and with the nomenclature of the various parts of a steam engine. Finally, there also came, in addition, on October 18, a commission of five gentlemen delegated by the High Government at Yedo, to see the *Soembing* and to ask the commanding officer for elucidation and information regarding shipbuilding and machinery. Mr. Fabius daily devoted himself to this with willingness.

While the *Soembing* was there, an English squadron under Admiral Stirling dropped anchor in the Bay of Nagasaki on September 7, where it remained until October 20. The commander of the fleet held several conferences with the Governor and appears to have reached an agreement [1] under which a couple of Japanese ports have also been opened to the English flag. At the request of the Admiral, the British squadron was also provided with the necessary fresh provisions by our factory. Upon his departure he declared his gratitude for this to the Superintendent in writing, after he had already had his thanks communicated to the officer in command of the *Soembing* for the honors shown him on passing that ship, which had been answered with the greatest courtesy by the British. Commodore Perry must also have called at Shimoda about June 1854 with his squadron and made some arrangements there arising out of the treaty concluded by him.[2]

Pursuant to orders received from Yedo, the Superintendent received written notice on September 19 that the present would be accepted by the Emperor, and that the reply to the letter of July 30 would be brought and communicated by the newly appointed Governor of Nagasaki. When the latter had arrived on October 15, the formal reception was finally held on the 23d of the same month. In the prompt acceptance of Your Majesty's present and the prospect opened of reaching the desired settlement before long, the friendly inclination towards the Netherlands was not to be mistaken. In fact, the special standpoint of Mr. Donker Curtius had been characterized more and more by unequivocal indications of confidence and respect. The frequent visits of very prominent Japanese officials and noblemen, the conversations with the Governor of Nagasaki, repeated time and again, the consultations on important questions, the constant calls for kindness and help: all that afforded the most convincing proof of this. No less did Lieutenant Fabius receive the greatest distinction and gratitude for his zealous and eager efforts both with respect to the instruction of the Japanese and also because of the giving of many written explanations regarding navigation, in reply to questions of the Japanese authorities.

Also, the numerous visits of persons in high places to the *Soembing* have left a most favorable impression towards the Netherlands. It cannot be immaterial to report here a few details in this connection, which at any rate merit attention from the standpoint mentioned. I take them principally from the report of the officer in command of that ship.

His Highness the Lord of Chikuzen, cousin of the Emperor, had expressed the wish to make a visit on board the *Soembing* on October 2. At 9 a.m. the whole

[1] Of October 14, 1854 (44 British and Foreign State Papers, 62–63).

[2] Commodore Perry visited Shimoda April 18–May 13 and June 7–25, 1854.

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ship was dressed; the Japanese flag was hoisted next to the Netherland flag, and everything was made ready to receive the Prince. At 10 o'clock there was a large number of Japanese officials on board, and an hour later the agent and a secretary of the Prince arrived, to make arrangements for His Highness in the cabin. Shortly afterward a Japanese bark came alongside, which was to serve as a gangway, so that the ship could be boarded without special difficulty. The Prince appeared at 10 o'clock and was received on board with the honors prescribed in the collection of sea orders, etc., for princely persons, with the exception that the commanding officer did not have a salute given, as prohibited by Japanese usage, and awaited His Highness not on deck but in the cabin. The Prince's retinue consisted of about 150 persons. After having tarried in the cabin for a few minutes, His Highness made known his desire to see some drills and to go all over the ship. "To arms" was immediately sounded and was accompanied by everything belonging to it, such as boarding, defense, etc., which was followed by general drill with side arms.

This and the whole ship, which had been placed in readiness for combat, down to the slightest detail, roused the highest interest and admiration of the Prince. After having inspected the *Soembing* even down to the smallest storerooms, he returned to the cabin with part of his retinue, where refreshments were offered, besides a suitable present. His Highness then remained three hours longer in conversation with the commanding officer, discussing the most varied subjects, such as the present European war, the interests of Japan, trade, and in particular foreign and free trade, mining, gun and iron foundries, fortifications, steam engineering, steam and special warships, education, schools, etc. Finally the Prince asked for a glass of champagne and emptied it with the declaration that the hours spent on the *Soembing* were the most interesting of his whole life, that he had never visited a warship, but what he had just seen had exceeded his greatest expectations, while he lastly expressed his thanks, especially for the information given, for which reason the call of the *Soembing* is prized all the more highly and will not easily be forgotten by the Japanese. While the crew was paraded on the shrouds and the yards and a triple cheer was given, His Highness returned to Nagasaki at 5 o'clock.

On October 17 His Highness the Lord of Hizen visited the *Soembing*. Received in the same way, he also inspected the whole ship, except for the magazine, where the commanding officer would not permit him to enter, armed with his saber, while he was not willing to take it off. After the performance of the drills, the Prince conversed for four hours longer with the commanding officer in the cabin on various subjects, and in so doing spoke with special interest of steam engineering, the navy, artillery, and shipbuilding. His Highness left the *Soembing* at 5 o'clock, thankful for the reception enjoyed and thrilled with what he had seen, while he made known also his regret over the departure of this ship before long, which he greatly regretted, in the interest of Japan.

A few days later a notable visit was again made. His Excellency the Governor of Nagasaki, his newly arrived successor, and an Imperial Commissioner with a following of at least two hundred persons, among them the five gentlemen from Yedo who had been delegated, accompanied by Mr. Donker Curtius, appeared on board the *Soembing* at 9 a.m. The whole ship was dressed with flags, and the Japanese flag was hoisted next to the Netherland flag. The forenoon was devoted to drills and the inspection of the ship, while the afternoon was spent in a pleasure cruise to sea. There was no precedent for Japanese of such high position having ever entrusted themselves thus to foreigners, and that distinction evidently aroused the amazement of their retinue.

After the performance of the maneuvers, the commanding officer had an interesting conversation with the two Governors. They considered the day spent on the *Soembing* as extremely important, tendered their special thanks for the lessons given to the Japanese, and expressed the wish to see Mr. Fabius back again soon, in the interest of Japan. The Governor still in office finally asked him explicitly, and in the presence of Mr. Donker Curtius, to communicate to the High Government in the Netherlands Indies and in the Netherlands that he felt the greatest respect for the Superintendent and that the Japanese Government placed the greatest confidence in him, in consequence of the manifold and unselfish services rendered to Japan by him. The persons of high degree left the *Soembing* at 7 p.m., satisfied and grateful.

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Amidst so many evidences of liking on the part of the Japanese noblemen and authorities, the day had come that had been set aside for the proposed formalities. With great pomp the Superintendent betook himself to the Government building, with the officer in command of the *Soembing*, accompanied by the officers of that vessel. Before them moved the porters of the factory with the chests in which Your Majesty's present was packed, and also the box, placed on a signboard, containing the description belonging with the telegraph and drawings prepared by Dr. van den Broek. At the Government building four receptions took place in succession. The first time, all entered together, being received by the two Governors and an Imperial Commissioner, with their train; at that time only the customary formalities were exchanged. Upon the second entrance, of the Superintendent and the captain only, the former presented the telegraph, with a brief address, being answered by the retiring Governor. The third and fourth entrances covered the special offering of gifts from the Emperor, firstly for bringing the electro-magnetic telegraph to Japan, and secondly for the instruction given to the Japanese in the various branches of navigation. Among them was a present of two sabers to the officer in command of the *Soembing*, which represents a very rare distinction in Japan. At the same time it was brought provisionally to the knowledge of the Superintendent that a counter gift from the Emperor, intended for Your Majesty, had not arrived in time to be sent at that time, and that a present would be given Mr. Donker Curtius later on, and that the two sabers for the officer in command of the *Soembing* would be delivered later, as being expected from Yedo. The Superintendent, the officer in command of the *Soembing*, and the officers of the vessel subsequently participated in a Japanese dinner offered them, at the close of which all the officers returned homeward. The two Governors and the Imperial Commissioner then received the Superintendent alone in their office and handed to him the official communication in a box specially prepared for it, serving as reply to his letter of the previous July 30.

This document, important to the Netherlands, contained the declaration that with regard to commercial intercourse the Netherlanders are different from the other nations and therefore trusted most by the Japanese Government; that it is naturally the intention of this Government to insure to the Netherlands too any privilege that might be granted to other nations; that, consequently, from the beginning the favor is granted to the Netherlanders also of visiting the two ports of Shimoda and Hakodate, just like the United States, and fully on the same footing, for the purpose of securing firewood, water, edibles, and other articles needed on board or to repair damaged ships, but that the conduct of trade continues to be restricted to the port of Nagasaki.

After the receipt of this communication, the *Soembing* was made ready for sailing, in order to carry the despatches from the Superintendent to Batavia. A commission came on the day before departure to say farewell to the commanding officer in the name of the two Governors, with repeated expressions of thanks for the important services rendered to Japan and with the declaration that the disinterested and useful sending of one of Your Majesty's warships is highly esteemed as a token of true friendship. At their request, the commanding officer also received the Japanese students, to the number of about two hundred, for farewell and as an expression of gratitude. The *Soembing* left the harbor of Nagasaki on October 26, after a commission from the Governors had appeared on board on the morning of that day in order to give assurance of their best wishes for a pleasant journey.

I have come to the end of my report, but do not believe that I can close it without briefly summarizing the conclusions thereof.

The Netherlands understood their mission when, on the basis of the course of world events, they took the initiative in bringing about, to the general advantage, a change in the regime of exclusion that existed in Japan with respect to foreign nations. The letter of His Majesty the late William II gives undisputable proof of this.

The United States of America has secured by treaty the opening of two ports in the Japanese Empire for its flag, and another power seems to be succeeding along the same line. In this outcome, I do not undervalue the impression and pressure made by powerful fleets, nor the influence of the simultaneous and earnest efforts of various countries. But I should also like to see recognition given the part

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played by the Netherlands in the way of counsel and persuasion. The fleets did represent a realization of the prophecies of Your Majesty's royal father and must therefore have created a direct acceptance of his disinterested counsel. The draft treaty of 1852, the letter from the Superintendent at Deshima of November 2, 1852, the communication of the Governor of Nagasaki of November 9, 1853, and, lastly, comparison of the draft treaty just named with the agreement concluded by the United States—one thing and another furnishes unimpeachable testimony that the measures taken under Your Majesty's orders have contributed effectively to the results obtained by other nations.

The privileges of the treaty secured by the United States have been assured to the Netherlands in Japan in the most formal way, with express equality of treatment with the most favored nation. The old bonds between the two Kingdoms have been drawn closer and strengthened by friendly and confidential rapprochement and affiliation. Although the conferring of these privileges and equality of treatment does not have the binding character of an agreement, for the present, it has great advantages nevertheless. Indeed, the so-called trade passports, which have formed the foundation for our admission into Japan for almost two and a half centuries, have been granted also in the form of a unilateral concession. Although what has now been gained may for the present provide few immediate advantages to the Netherlands, as long as the Japanese Government does not permit any real trade outside the port of Nagasaki, that Government may undoubtedly be brought to the conviction that the granting also of unrestricted trade at the open ports is not to be withheld permanently. The granting [of it] is dictated just as much by the interests of Japan herself, as it lies in the path of the efforts of the Netherland Government, which may rejoice, therefore, at a first step of the Japanese Government in this path. However, the Netherlands have always viewed an opening of Japanese ports as in the general interest and for the benefit of trade. Unselfishly adhering to this policy, the Netherlands have not sought any privileges for themselves in Japan, but they have in fairness asked for and obtained equal treatment with others when favors were granted the latter.

My present report serves to afford Your Majesty a complete general view of what has been done by us and the present state of affairs in Japan. It appears to me to be desirable to make the document of use also for satisfying the proper interest that there is in the matter, and I therefore take the liberty of requesting Your Majesty's authorization to have the above report placed in the *Nederlandsche Staats-Courant.*

CHS. F. PAHUD,
Minister of Colonies.

Draft of a Treaty to Be Concluded between the Plenipotentiaries of His Majesty the King of the Netherlands and His Majesty the Emperor of the Japanese Empire

(Appropriate introduction)

ARTICLE 1. The relations existing between the Netherlands and Japan for more than two centuries are confirmed.

Peace shall continue to exist between the two Empires.

ARTICLE 2. The port of Nagasaki is opened also to other seafaring nations than the Netherlanders, for the purpose of securing there the necessary provisions and ships' stores, repairing their ships, and caring for their sick sailors.

ARTICLE 3. Those seafaring nations that have from ancient times lived at peace with the Empire of Japan and which might request this, shall themselves be permitted to trade, provided that a treaty is concluded with the Empire of Japan on the bases stated in the following article.

ARTICLE 4. *a.* The trade shall be restricted to the port of Nagasaki, which shall be opened to the mariners of any nation which shall have concluded a treaty with Japan.

b. Every nation thus permitted to trade shall have a superintendent over its trade (consul) at Nagasaki.

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c. The Japanese Government shall assign a quarter in Nagasaki to the merchants of such nations for their establishment.

d. Foreign trade remains, on the part of the Japanese, entrusted to the merchants of the five imperial cities of Yedo, Miyako,[1] Osaka, Sakai, and Nagasaki, who are privileged by His Majesty the Emperor and placed under the supervision of the Governor of Nagasaki.

e. An opportunity shall be given to all agents of the Japanese princes (lords) to purchase foreign goods in return for products of their lands.

f. An order shall be drawn up by the Japanese Government regulating the way in which the trade shall be carried on and the policing of the port of Nagasaki exercised.

g. For the accommodation of trade with foreigners, cash-notes shall be issued by the Japanese Government, payable on presentation at the Imperial Treasuries at Nagasaki and Osaka.

h. The use of Japanese copper coins for household expenditures by the foreigners admitted to trade shall be allowed.

i. The Japanese Government reserves the right to introduce a moderate scale of duties on imports and exports.

j. All differences that might arise out of the trade between foreigners and Japanese shall be settled by the consul of the nation to which the foreigner belongs and the Governor of Nagasaki or an agent authorized by him.

k. Transgressions or misdeeds shall be left to the adjudication or judgment and punishment of the nation to which the transgressor or misdoer belongs.

l. The Japanese Government undertakes to give notice concerning two places at which the nations admitted to trade can establish ship-carpenter's yards and coal yards.

One of these places shall be situated in the north of the Empire, on Yezo, in the "Bay of Good Hope",[2] and the other in the south of the Empire, on one of the islands of the Linschoten Archipelago.[3]

ARTICLE 5. The provisions contained in the foregoing article shall be submitted to the foreign powers that apply for the making of a treaty with the Empire of Japan, as the basis for such a treaty.

ARTICLE 6. In case of the conclusion of treaties with foreign powers on the bases stated above, the Netherlanders shall be placed on an equal footing with the most favored nations.

CLOSING ARTICLE. The ratification of this treaty by His Majesty the King of the Netherlands and His Majesty the Emperor of Japan shall be exchanged as soon as the great distance between the Netherlands and Japan will permit, but in the meantime copies thereof, to be signed by the Plenipotentiaries on each side in the name of their Sovereigns and confirmed with their seals, shall be reciprocally delivered, and the provisions and arrangements contained therein shall take effect at once.

Done at ---------- and signed and confirmed by their seals, by the Plenipotentiaries on the ----------, corresponding to the ----------

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Note of Explanation on the Draft Treaty to Be Concluded between His Majesty the King of the Netherlands and His Majesty the Emperor of Japan

His Majesty the King of the Netherlands is desirous that the ancient relations and the trade of his subjects with the Empire of Japan be maintained. His Majesty realizes the difficulties existing in the Japanese institutions in the way of yielding to the demands of foreign powers for the establishment of commercial relations with that Empire, and foresees the dangers to which Japan is unavoid-

[1] Kyoto.
[2] Akkeshi Bay.
[3] Shichi To or Tokara Gunto, to the south of Kyushu and north of Ryukyu.

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ably exposed if the Government of that Empire accords no attention to reasonable demands of this sort.

His Majesty also considers himself in a better position than any prince to make representations to the Supreme Ruler of the Empire for mitigating the strict laws against foreigners, because of the reports of his subjects, who have long sailed to Japan and are well acquainted with Japanese affairs, and at the same time skilfully to make representations in order to satisfy the heads of other maritime nations with the favors which the Supreme Ruler of Japan can and may grant to foreign nations even without violating the laws given to the Empire by the founder of his dynasty.

The King has therefore decided to have a treaty between Their Majesties the King of the Netherlands and the Emperor of Japan drafted and presented, in which, the laws and old usages of the Empire of Japan being respected, the way is indicated through which not only a friendly trade relation with the subjects of His Majesty the King of the Netherlands is to be maintained in future, but also such granting of personal liberty and liberty to trade can be allowed to the subjects of other seafaring nations which ask to enter into commercial relations with Japan or who approach the coasts of Japan under fortuitous circumstances and with peaceful intent, so that their demands can be satisfied as far as possible and the tranquillity and peace which Japan has enjoyed for more than two centuries can be maintained.

For the explanation of such a draft treaty, enclosed herewith, His Majesty the King makes use of the following lines of writing:

ARTICLE 1. Being grateful for the unvarying friendship shown the Netherlanders for more than two centuries by the Japanese Government, His Majesty the King wishes to see this relation strengthened.

At a time when it might happen that the Japanese Empire would become involved in a war, His Majesty would like to display his friendship and pacific sentiments toward Japan.

ARTICLE 2. Navigation and whaling are increasing greatly in the Pacific Ocean from year to year, and the dangers connected with them make it of the greatest importance to the seafaring nations that an opportunity exist in Japan for repairing their ships and supplying them with provisions.

ARTICLE 3. As it is to be expected that the President of the United States of America and perhaps other powerful European nations also will not rest until commercial intercourse with Japan has been opened, wisdom appears to counsel that, while there is yet time, commercial intercourse be granted on such terms as, on the one hand, will not conflict too greatly with the principles followed in Japan for a long time, and, on the other hand, at the same time give reason to believe that the foreign nations will be satisfied with them.

With this twofold aim, the conditions stated in Article 4 are drawn up.

ARTICLE 4. *a.* The port of Nagasaki appears best adapted to be opened to trade with foreigners, and since the opening of no other ports is proposed, intercourse of foreign nations with the other parts of Japan is cut off by so doing.

b. Such a superintendent is, however, not the only merchant, but the head of the foreign merchants.

c. The Netherlanders have Deshima as a place to stay: it ought to be possible also for a place to be assigned for foreigners, both for their dwellings and their warehouses.

d. As the inhabitants are forbidden under the laws of Japan to carry on direct trade with foreign merchants, His Majesty believes that great benefit can be derived from the means indicated here.

e. The stipulation appearing here does not seem to conflict with Japanese law.

f. Under the regulations contemplated here, not only shall the Japanese Government order the way in which the trade is to be conducted on the basis of the above regulations, but regulations may also be made, for the sake of good order, regarding the arrival, stay, and departure of ships, the inspection of ships, and unloading and loading.

g. As the exportation from Japan of noble metals, such as gold and silver, is prohibited, and as no foreign gold and silver money may be in circulation in the

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country, the means mentioned here has been conceived in order to make trade with foreigners possible.

h. The low expenditures necessitated for the daily living of the foreigners makes such a regulation as appears here seem desirable.

i. That an impost is collected from foreign merchants by the Japanese Government in this way certainly appears reasonable. The impost can also serve to counteract too great an influx of merchandise. The impost might, however, also be exaggerated, even to the extent of amounting to exclusion. Therefore a *moderate* scale is spoken of.

j. Requires no explanation.

k. Requires no explanation.

l. The intercourse between the west coast of North America and the east coast of Asia and the Empire of China which has been projected and already brought about in part by means of steamships, renders the places assigned indispensable in the interest of steam navigation, particularly for the United States of America. By the assignment of these two places, the Japanese Government will probably prevent the making of requests by foreign nations for more or different places for that purpose.

ARTICLE 5. It is anticipated that in the first place the United States of America will be disposed to conclude a treaty on the bases stated in Article 4, and that in so doing peace will be maintained.

ARTICLE 6. His Majesty the King of the Netherlands has not stipulated anything special for his subjects, but expects that this provision will not meet with any objections on the part of His Majesty the Emperor of Japan.

THE VIEWS OF COMMODORE PERRY

The anticipatory views of Perry regarding his mission were expressed in two communications to the Secretary of the Navy. The first of these here printed, called "Notes", is undated, but was written before Perry left the United States (D.S., 19 Special Agents); the second is his despatch from Madeira of December 14, 1852 (serial 751, pp. 12–14):

Notes.

Submitted by Com Perry to Honb[l] Sec[y] of the Navy

"In the first place, there can be, it may be presumed, no question as to the propriety and justice of demanding of the Japanese, redress for the past, and immunity for the future.

"These people are to be looked upon either as civilized or barbarian:

"If the former, they have no right in the present condition of the World, to isolate themselves and treat as malefactors, all strangers, who may be driven to their Shores for safety or by the perils of the Sea:

"Such cruelty would not have been tolerated in the earliest ages, and if exercised by any European nation at the present time would rouse the indignation of the whole people of this country, and be a just cause of war.

"If on the contrary, they are considered as a barbarous race, then they should be treated accordingly, and be made to conform to the recognized law of nations, so far at least as may relate to their treatment of unoffending strangers

"But whether civilized or otherwise Destiny seems to have determined that the United States are to take the lead in bringing these extraordinary people into the family of nations.

"The World has assigned this duty to us we have assumed the responsability and undertaken the task, and can not now hold back, without drawing upon ourselves ridicule and reproach.

"The United States Government has advanced too far to recede, and in the maintenance of its character for energetic action, it is bound to proceed, even if the course of events and circumstances of the times did not demand it.

"The tide of empire is gradually flowing Westward, and for the next half-century the most prominent events of the World are to transpire in the Western Hemisphere, and especially in the Pacific Ocean.

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"From the geographical position of the United States, and their rapidly growing commerce between the Shores of the Pacific and China, and the Polynesian Islands, our people must naturally be drawn into the contest for empire, whether for good or for evil, and it will be wise to anticipate and prepare for events inevitable in themselves.

"All that can at first be expected of this singular people is nothing more than what we Should have a just right to demand of England or France, or any other civilized nation in time of peace" Shelter, refitment, and Supplies for our Ships, whether public or private.

"Even in war no civilized nation would be justified in treating with harshness unarmed vessels, driven by necessity into their Ports, or what is more disastrous, wrecked upon their Shores by the Providence of God."

Such acts of cruelty if perpetrated as I have before remarked by any other nation would be promptly resented by the United States, and why should it be tamely submitted to from a Power, whose territories lay directly in the route of a Commerce, which though now in its infancy is destined to rival that of Our European trade.

Though the youngest in the family of maritime nations, yet the United States gave the first example of suppressing the tribute paid to the Mediterranean Corsairs they will I trust have the greater honor of bringing the Japanese to their senses.

The opening of the Ports of China by the British Government has proved to be one of the most humane and useful acts of that nation during the present Century, and has done more, and will continue to do more to Christianize the Chinese and meliorate their moral and social condition than ages of missionary labours would have accomplished.

"In a short time we shall have an extensive Steam Navigation from our Pacific Ports to China. The route of this trade must necessarily pass near to and often in Sight of the Southern extremity of Japan.

"Supposing a Steamvessel in the vicinity of a Japanese Port should have her engines disabled and by consequence fall short of water and provisions, or what is almost as bad, fall short of fuel, what would be the alternative?

"If under the present State of things She were to go into Port, her passengers and crew are seized, and carried into the most cruel captivity, and the Vessel destroyed; and if She remains at Sea, starvation and death is their inevitable fate.

"It is plain therefore that stern necessity makes it imperative on the United States to secure "peaceably if we can, forcibly if we must" Ports of refuge to the numerous vessels under the American Flag, whalers and others that are constantly passing the Coasts of this Strange Government; and if we had not just grounds of demanding explanation and of coercing if need be reparation for past acts, we are certainly called upon by the necessity of the times to push to success, cost what it may, the ultimate issue.

"Having thus briefly stated the grounds upon which I humbly conceive, we have a right to proceed I can only further remark with respect to the tenor of the instructions under which I am to act that in the ordinary course of things I must be governed by circumstances as they may transpire, and which cannot be foreseen, and hence the policy and necessity of giving me large discretionary powers.

I am fully aware of the great responsability I shall assume in undertaking this duty, and the uncertainty of success, but the duty has to be performed, and feeling no desire to avoid responsability, and confident in my own good intentions and zeal in the cause, I shall embark in the undertaking with a well grounded hope of a favorable result, provided adequate means be placed at my disposal.

"As to details of instructions it will be necessary that I should be furnished with a sufficient number of vessels of suitable description

That the Force thus detailed should be kept intact, so long as there may be need of its service.

That the Ships should be regularly relieved and in time to allow of the punctual discharge of the men at the expiration of their periods of service, and that all vessels employed in the Squadron should have full complements of officers and men.

That I may be authorized in case of need to retain the vessels beyond the periods of their Service

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"If their crews can be reshipped or recruits otherwise procured.

That the two Store Ships the Supply and Southampton may be retained as long as wanted on the Station for the transportation of Coal provisions, etc.

That I may have general authority to hire interpreters, and if necessary additional vessels for the transportation of coal carrying despatches, and for such other employment as the exigencies of the service may demand.

In a word, that such full authority be given to me as the Department may deem prudent and politic to invest in an officer of my position, and under the peculiar circumstances in which I shall be acting in a remote part of the World, and almost entirely cut off from communication with the Government at home.

I do not ask for this full power from motives of personal vanity, but because I believe that with such authority I may better accomplish the objects of the Mission.

Respectfully Submitted.

M, C, PERRY

US STEAM FRIGATE MISSISSIPPI
Madeira December 14th 1852

SIR Since leaving the United States, I have had leisure to reflect more fully upon the probable result of my visit to Japan, and though there is still some doubt in my mind, as to the chances of immediate success in bringing that strange government to any practicable negotiation, yet I feel confident, that in the end, the great object in view will be effected.

As a preliminary step, and one of easy accomplishment, one or more ports of refuge and supply to our whaling, and other ships, must at once be secured, and should the Japanese Government object to the granting of such ports upon the main land, and they cannot be occupied without resort to force, and bloodshed, then it will be desirable in the beginning, and indeed necessary, that the Squadron should establish places of Rendez-vous at one or two of the Islands South of Japan, having a good harbour, and possessing facilities for obtaining water and supplies, and by kindness and gentle treatment conciliate the inhabitants, so as to bring about their friendly intercourse.

The Islands called the Loo-Choo group [1] are said to be dependencies of Japan, as conquered by that power centuries ago; but their actual sovereignty is disputed by the Government of China.

These Islands come within the jurisdiction of the Prince of Satsuma, the most powerful of the Princes of the Empire, and the same who caused the unarmed American ship Morrison, on a visit of mercy to be decoyed into one of his ports and then fired upon from batteries hastily erected. He exercises his rights more from the influence of the fear of the simple Islanders, than from any power to coerce their obedience, disarmed as they long have been, from motives of policy, they have no means, even if they had the inclination, to rebel against the grinding oppression of their rulers.

Now it strikes me, that the occupation of the principal ports of those Islands, for the accommodation of our ships of war, and for the safe resort of merchant vessels of whatever nation, would be a measure, not only justified by the strictest rules of moral law, but what is also to be considered by the laws of stern necessity, and the argument may be further strengthened by the certain consequence of the amelioration of the condition of the Natives, although the vices attendant upon civilization may be entailed upon them.

In my former commands upon the Coast of Africa, and in the Gulf of Mexico, when it fell to my lot to subjugate many Towns and communities, I found no difficulty in conciliating the good will, and confidence of the conquered people by administering the unrestricted power which I held, rather to their comfort and protection, than to their annoyance, and when the Naval Forces left, they

[1] Now properly called Ryukyu Islands, forming part of the Japanese Empire. The name *Lew Chew*, generally used by Commodore Perry and at the time, is one of various transliterations from the Chinese (Luchu, Loochoo, etc.). See the editorial notes to Document 166, the "compact" made by Perry with the Government of Loochoo on July 11, 1854.

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carried with them the gratitude and good wishes of their former enemies, and so I believe that the people of the Islands spoken of, if treated with strict justice, and gentle kindness, will render confidence for confidence, and after awhile the Japanese will learn to consider us their friends.

In establishing these ports of refuge, it will be desirable to provide the means to supply to the vessels, that may resort to them, and hence the necessity of encouraging the Natives in the cultivation of fruits, vegetables etc, and to carry out in part this object, gardenseeds have been provided; but to pursue the purpose still further, I have thought that if a few of the more simple agricultural implements of our own Country were sent to me for use, and for presents, they would contribute most essentially to the end in view, such for instance as the common cultivator, the plough and harrow, spades, hoes of various kinds, the threshing and winnowing machines, and especially those inventions for separating the cotton and rice, from their husks.

And with reference also to the subject of my letter [1] to Mr Falsom, Chargé at the Hague, a copy of which has been enclosed to the Department of State, it would be good policy to counteract the discreditable machinations of the Dutch, by circulating printed publications, representing the true condition of the various Governments of the World, and especially to set forth the extraordinary prosperity of the Gov^{t} of the United States, under Its genial laws.

To effect this object, I am already provided with works for presentation, descriptive of the civil and political condition of the United States, such as the census tables, Post office and Railroad reports, reports of Indian and Land offices, Military and Naval Registers, also with the magnificent publications of the State of New York, etc^{a}, etc^{a}

And I have thought that a small printing press, with type and materials, would go far to facilitate our plans, by giving us the means of putting forth information, calculated to disabuse the Japanese, of the misrepresentations of the Dutch.

The Government of Japan keeps in employment numerous linguists in all modern languages, and such is their curiosity, that these publications if admitted at all, would soon be translated.

Having thus, according to my anticipations, established harbours of resort, and organized certain rules of equity to govern our intercourse with the Natives, in the payment of labour, supplies, etc^{a}, and having depôts of provisions, and coal near at hand, we shall be able to act with more effect in bringing about some friendly understanding with the Imperial Government; at all events steamers or whatever vessels that may be passing to and from California, and China, will find safe harbours in their way, and it may reasonably be expected, that in the course of time, the intercourse thus brought about, will lead to a better understanding of our pacific intentions.

It may be said, that my anticipations are too sanguine, perhaps they may be, but I feel a strong confidence of success, indeed success may be commanded by our Government, and it should be under whatever circumstances accomplished. The honor of the Nation calls for it, and the interest of commerce demands it. When we look at the possessions in the East of our great maritime rival England, and of the constant and rapid encrease of their fortified ports, we should be admonished of the necessity of prompt measures on our part.

By reference to the maps of the world, it will be seen that Great Britain is already in possession of the most important points in the East India and China Seas, and especially with reference to the China Seas.

Singapore commanding the South Western, while Hong Kong covers the North Eastern Entrance, with the Island of Labuan on the Eastern Coast of Borneo, an intermediate point, she will have the power of shutting up at will, and controlling,

[1] This letter, written from Madeira, has not been found. It appears to have requested transmission from time to time of information respecting the relations of the Netherland Government with Japan (see D.S., Miscellaneous Letters, December 1852, Perry to the Secretary of State, December 13, 1852; 14 Instructions, Netherlands, 99, February 9, 1853; and 14 Despatches, Netherlands, No. 40, March 8, 1853). Previous correspondence between Perry and Folsom is referred to above under the heading "Communications with the Netherlands".

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the enormous trade of those seas, amounting it is said in value to 300,000 Tons of shipping carrying cargoes certainly not under 15,000,000 £ Sterling *

Fortunately the Japanese and many other Islands of the Pacific are still left untouched by this unconscionable [1] Government, and as some of them lay in a route of a commerce, which is destined to become of great importance to the United States, no time should be lost in adopting active measures to secure a sufficient number of ports of refuge. And hence I shall look with much anxiety for the arrival of the Powhattan and the other vessels to be sent to me.

I have thus exhibited in this crude and informal communication, my views upon a Subject, which is exciting extraordinary attention throughout the world, and I trust, that the Department will approve the course I propose to pursue.

With great respect I have the honor to be,

Your obedient servant,

M, C, PERRY
Commanding East India Squadron.

The Honorable
SEC^{Y} OF THE NAVY
Washington DC

The foregoing despatch was thus answered by Secretary of State Everett on behalf of the President a few days before the Fillmore administration ended (D.S., 3 Special Missions, 22–24; just when this instruction was received by Perry is not of record; see Narrative, I, 87; the probable date is May or June 1853):

DEPARTMENT OF STATE,
Washington, 15th. February, 1853.

To Commodore M. C. PERRY,
Commanding the United States Naval forces in the China Seas.

SIR, Your despatch of the 14th. of December has been referred by the Secretary of the Navy to this department and by me submitted to the President.

The President concurs with you in the opinion, that it is highly desirable, probably necessary for the safety of the expedition under your command, that you should secure one or more ports of refuge of easy access. If you find that these cannot be obtained in the Japanese islands without resort to force, it will be necessary that you should seek them elsewhere. The President agrees with you in thinking, that you are most likely to succeed in this object in the Loo Choo islands. They are from their position well adapted to the purpose; and the friendly and peaceful character of the natives encourages the hope that your visit would be welcomed by them.

In establishing yourself at one or two convenient points in those islands with the consent of the natives, you will yourself pursue the most friendly and conciliatory course and enjoin the same conduct on all under your command. Take no supplies from them except by fair purchase for a satisfactory consideration. Forbid and at all hazards prevent plunder and acts of violence on the part of your men toward these simple and unwarlike people;—for such they are described to be. Let them from the first see that your coming among them is a benefit and not an evil to them. Make no use of force, except in the last resort for defence if attacked, and self-preservation.

The President approves the idea suggested by you of encouraging the natives to turn their attention to agriculture, and has given orders to have the implements

*See G. Crawford's [John Crawfurd, Governor of Singapore 1823–26] opinion, in [Henry Keppel] "The Expedition to Borneo by HM Ship Dido" chapter 24th Published by Harper & Brothers, New York 1846.

[1] In Narrative, I, 85–87, where this despatch is printed, the wording here is "this 'annexing' government".

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of husbandry [1] mentioned by you sent out by the Vermont. He has also directed a small printing press with type and materials for printing of all kinds to be sent out by the Vermont.

The President is gratified to perceive that you are impressed with the importance of the enterprize confided to your direction, the success of which will mainly depend upon your Prudence and address. It will attract a large share of the attention of the civilized world; and the President feels great confidence that the measures adopted by you will reflect credit on your own Wisdom and discretion and do honor to your country.

I am, Sir, respectfully,
Your obedient servant,

EDWARD EVERETT.

FIRST VISIT TO JAPAN

The order of the Navy Department directing Commodore Perry to take command of the East India Squadron, comprising the *Susquehanna*, the *Plymouth*, and the *Saratoga*, then in waters of China, was issued on March 24, 1852 (Paullin, *op. cit.*, 253). Of the Far East Perry had no first-hand knowledge; the intervening months before his departure were spent in study of the available authorities [2] and other preparation for the mission.

Commodore Perry left Norfolk in the U.S. steam frigate *Mississippi* on November 24, 1852; other vessels which the Navy Department had decided to add to his squadron were not then ready for sea [3] (see *ibid.*, 254–55; Narrative, I, 79–80); having called at Madeira, St. Helena, Capetown, Mauritius, Ceylon, Singapore, and Macau (*ibid.*, 81–133, *passim*), Perry arrived at Hong Kong on April 7, 1853, where he found the sloops of war *Plymouth* and *Saratoga* and the storeship *Supply*;[4] but the steam frigate *Susquehanna*, which had been designated as the flagship of the Commodore, had sailed a fortnight previously for Shanghai (*ibid.*, 133). To that port, accordingly, Perry proceeded (April 27); after his arrival there (May 4) he transferred his flag to the *Susquehanna* (May 9); on May 17 he left Shanghai; and on May 23 he left the mouth of the Yangtze Kiang, "bound for Napha, the principal port of the Great Lew Chew island" (National Archives, Log Books, U.S.S. *Mississippi* and *Susquehanna*; Narrative, I, 149).

It was at this time contemplated by Commodore Perry that it would be necessary for him to make more than one visit to Japan; in his unprinted despatch No. 9, of April 27, 1853, from Macau, he wrote (excerpt):

I propose to sail the day after tomorrow for Shanghai, and from thence proceed to Japan, deeming it advisable in order to avail of the favourable season not to

[1] An instruction of February 26, 1853, to Dr. James Morrow, detailed for duty "in reference to the care and distribution of seeds and the use of agricultural implements", is in D.S., 3 Special Missions, 24–25; see Narrative, II, 13, 414.

[2] Two important works on which Perry largely relied were Golovnin, Memoirs of a Captivity in Japan, during the Years 1811, 1812, and 1813; and Von Siebold, Nippon, Archiv zur Beschreibung von Japan und dessen Neben- und Schutzländern.

[3] Three of these, the *Princeton*, the *Vermont*, and the *Alleghany*, did not join the squadron.

[4] The *Supply* had sailed from the United States in May 1852 (Paullin, *op. cit.*, 254).

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wait the arrival of the other vessels of the Squadron, expected from the United States, of whose departure from home, I have as yet received no information.

I do not expect to effect any thing definite on my first visit to Japan, apprehending that much time and patience, and the exhibition of a larger force will be required to bring about a favourable issue. But I shall have an opportunity of making such demonstrations and observations as will enable me to act under a better knowledge of the intentions of the Japanese, with respect to the demand, which will be made upon them; at present nothing is known in China of their purposes. Meanwhile the ships will be usefully employed in explorations and surveys, having reference to the expediency of establishing dépôts and ports of refreshment for Steamers and other vessels on the route from California to China, which is now much traversed.

The present disturbed state of China has made it necessary for want of another Steamer to charter for a limited period a small barque of light draft to be employed as a despatch vessel, to keep up my communication when on the Japanese Coasts with Canton and Shanghai; the cargoes of coal, provisions and stores she will carry in her frequent passages, will by the saving of freight, fully pay for her hire.

After some weeks spent at Loochoo and the Bonin Islands (May 26 to July 2, 1853; see Narrative, I, 151–228, *passim*), the squadron of four vessels on July 2 left Naha for the first of the two visits made by Commodore Perry to Japan[1] during the course of his mission. This first visit lasted from Friday, July 8, when Perry anchored in Yedo Bay, until Sunday, July 17, when he left. Perry summarizes the results in this despatch, No. 17, of August 3, 1853, to the Secretary of the Navy, in reading which (and other papers of that time) it is to be remembered that the "Bay of Yedo" is now Tokyo Bay and "the City of Yedo" is Tokyo (serial 751, pp. 43–45):

Nº 17. US Steam Frigate Susquehanna
At Sea, August 3d, 1853.

Sir My despatch Nº 16 dated at Lew-Chew the 28th of June last[2] will have informed the Department of the transactions of the Squadron up to that time; since then, I have visited the Bay of Yedo in Japan, have had an interview with a first Counsellor of the Empire under circumstances highly satisfactory, have delivered with all due ceremony to that personage the letter addressed by the President to the Emperor, as also my letter of credence, have approached in the "Mississippi" within seven miles of the City of Yedo, and surveyed with the ships and boats of the Squadron the Bay twenty miles higher than any foreign vessel had ever before reached.

As an account of all the interesting events, which transpired during the short stay of the Squadron upon the coast, could not well be narrated in a formal letter, I have prepared a series of notes, herewith enclosed, which will fully explain to the Department the course and policy of my proceedings.

When the additional force, which I have been daily expecting, shall join me, I may hope at the proper season to make still further progress in the difficult task of bringing this impracticable Government to a rational uuderstanding of its obligations to other nations, and especially towards the United States.

Every day of observation strengthens the opinion, so often expressed in my communications to the Department, that the large and increasing commerce of the United States with this part of the world makes it not only desirable, but indispensable, that ports of refuge should be established, at which vessels in distress may find shelter.

[1] Meaning here the Japan of 1853, apart from the Loochoo and Bonin Islands, which now form part of the Empire.

[2] Printed, with enclosures, in serial 751, pp. 39–43.

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To this end, I have adopted every possible means of conciliating and bringing into some degree of social intercourse the authorities and people of Lew Chew, and have made considerable progress, though they are almost identical in appearance, language, religion, customs, and last of all in consummate deceit with the Japanese.

A former communication[1] N° 15 will have informed the Department of my transactions at the Bonin Islands, and it is my intention to cause the Southern Cluster, called Coffin's Group, to be surveyed; charts having already been made of Port Lloyd, Peel Island, and of the Ports of Napa and Melville in Lew Chew; and materials collected for the construction of a Chart of the Bay of Yedo, as far as the Squadron penetrated.

I have experienced most seriously the want of a small steamer, not only in surveying service, but in the operations of the Squadron upon the Coast of China and Japan.

On my next visit to the Bay of Yedo, one will be absolutely necessary to enable me to complete the survey of the head of the Bay, and to penetrate as near to the city as the depth of the water will allow.

Under these circumstances, I shall avail myself of the authority granted in my instructions "to employ despatch vessels" etc etc., and endeavor to hire for a short time a steamer of very light draft, the employment of which will save the necessity of keeping the large steamers so much under steam to cover the surveying boats; and thereby save, in the greatly reduced consumption of coal, more than the actual cost of the hire of the extra steamer.

Should the Department however not approve the temporary employment of such a vessel, there will be time to inform me by the Overland Mail, before it will be necessary to enter into any engagement for the Charter, though I trust that the necessities of the peculiar service, in which I am engaged will induce a full authority for me, to act according to my best judgement in the matter.

Indeed, it would be a measure of economy to purchase or permanently hire a small steamer for this Station, as she could perform much of the service now necessarily required of the larger vessels, thus largely saving in the consumption of fuel; a very important consideration, when we take into view the difficulty and cost of transporting coals so far.

With great Respect I am Sir
Your most obedient servant

M, C, PERRY
Commanding East India Squadron.

The Honorable
JAMES C DOBBIN
Secretary of the Navy
Washington D.C.

Enclosed with the foregoing despatch was a copy of a letter[2] addressed by Commodore Perry to the Emperor of Japan under date of July 7, 1853, as follows (*ibid.*, 55–57):

To His Imperial Majesty
THE EMPEROR OF JAPAN.

The Undersigned Commander in Chief of all the Naval Forces of the United States of America stationed in the East India China and Japan Seas, has been sent by his Government to this Country on a friendly mission, with ample powers to negotiate with the Government of Japan, touching certain matters which have been fully set forth in the letter of the President of the United States; copies of which together with copies of the letter of credence of the Undersigned in the English, Dutch, and Chinese languages are herewith transmitted.

The original of the President's letter and of the letter of credence prepared in a manner suited to the exalted station of Your Imperial Majesty will be presented

[1] Printed, with enclosures, in serial 751, pp. 29–39.

[2] Commodore Perry noted that this letter "embraces the substance of the language used in my instructions from the Navy Department".

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by the Undersigned in person, when it may please Your Majesty to appoint a day for his reception.

The Undersigned has been commanded to state that the President entertains the most friendly feelings towards Japan, but has been surprised and grieved to learn that when any of the people of the United States go of their own accord, or are thrown by the perils of the sea within the dominions of Your Imperial Majesty, they are treated as if they were your worst enemies.

The Undersigned refers to the cases of the American ships Morrison, Lagoda and Lawrence.

With the Americans as indeed with all Christian people it is considered a sacred duty to receive with kindness, and to succour and protect all of whatever nation who may be cast upon their shores, and such has been the course of the Americans with respect to all Japanese subjects who have fallen under their protection.

The Government of the United States desires to obtain from that of Japan some positive assurance that persons who may hereafter be shipwrecked on the Coast of Japan, or driven by stress of weather into her ports shall be treated with humanity.

The Undersigned is commanded to explain to the Japanese that the United States are connected with no Government in Europe, and that their laws do not interfere with the religion of their own Citizens much less with that of other nations.

That they inhabit a great country which lies directly between Japan and Europe, and which was discovered by the nations of Europe about the same time that Japan herself was first visited by Europeans, that the portion of the American Continent lying nearest to Europe, was first settled by emigrants from that part of the World; that its population has rapidly spread through the Country until it has reached the shores of the Pacific Ocean, that we have now large cities from which with the aid of steam vessels we can reach Japan in eighteen or twenty days, that our commerce with all this region of the Globe is rapidly increasing and the Japan seas will soon be covered with our vessels

Therefore as the United States and Japan are becoming every day nearer and nearer to each other, the President desires to live in piece and friendship with Your Imperial Majesty but no friendship can long exist unless Japan ceases to act towards Americans as if they were her enemies.

However wise this policy may originally have been it is unwise and impracticable now that the intercourse between the two countries is so much the more easy and rapid than it formerly was.

The Undersigned holds out all these arguments in the hope that the Japanese Government will see the necessity of averting unfriendly collision between the two Nations by responding favorably to the propositions of amity, which are now made in all sincerity.

Many of the large ships of war destined to visit Japan have not yet arrived in these seas, though they are hourly expected, and the Undersigned as an evidence of his friendly intentions has brought but four of the smaller ones, designing should it become necessary to return to Yedo in the ensuing spring with a much larger Force

But it is expected that the Government of Your Imperial Majesty will render such return unnecessary by acceding at once to the very reasonable and pacific overtures contained in the President's letter, and which will be further explained by the Undersigned on the first fitting occasion.

With the most profound respect for Your Imperial Majesty and entertaining a sincere hope that you may long live to enjoy health and happiness.

The Undersigned subscribes himself

(Signed) M C PERRY.

Commander in Chief of the US Naval Forces in the East India, China and Japan seas.

US STEAM FRIGATE SUSQUEHANNA
off the Coast of Japan, July 7th, 1853.

Also enclosed with the above-quoted despatch of Perry of August 3, 1853, as stated therein, was a "series of notes" dated July 30, 1853,

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giving a detailed "account of all the interesting events, which transpired during the short stay of the Squadron"; and in those notes are quoted translations of various communications received from the Japanese officials. The writings addressed to the Emperor of Japan which were delivered on July 14 at Kurihama [1] "with all due ceremony" were five: the letter of President Fillmore (printed above), Perry's "letter of credence" (full power, printed above), and three letters written by Perry, respectively of July 7 (printed above) and July 12 and 14 (printed below). The "series of notes" is here printed (serial 751, pp. 45–55); but, in order to make the account more nearly complete, the running text of those notes is interspersed with excerpts from the more ample report in the Narrative (I, 228–73) and from the journal of Williams (46–70):

Notes referring to events which transpired pending the preliminary negotiations of Commodore M C Perry with the authorities of Japan in July 1853.

The Squadron consisting of the Steamers Susquehanna and Mississippi, and the sloops of war Plymouth and Saratoga, commanded respectively by Commanders Buchanan, Lee, Kelly and Walker left Napa Keang, Island of Lew Chew, on Saturday the 2nd and anchored off the City of Uraga, Bay of Yedo, Japan on the afternoon of Friday the 8th of July.

I had before reaching the coast fully considered and determined upon the course I should pertinaciously pursue in conducting the delicate and responsible duties which had been entrusted to my charge.

It was to adopt an entirely contrary plan of proceedings from that of all others who had hitherto visited Japan on the same errand To demand as a right, and not to solicit as a favour those acts of courtesy which are due from one civilized nation to another, to allow of none of those petty annoyances which have been unsparingly visited upon those who had preceded me, and to disregard the acts as well as the threats of the authorities if they in the least conflicted with my own sense of what was due to the dignity of the American Flag.

The question of landing by force was left to be decided by the development of succeeding events

In pursuance of these intentions I caused the crews to be thoroughly drilled, and the ships kept in perfect readiness as in time of active war, and being thus prepared for any contingency I determined to practice upon them a little of their own diplomacy by forbidding the admission of a single individual on board any of the ships excepting those officers who might have business with me, and the visits of these were to be confined to the Flag Ship, on board of which they were not allowed to enter until they had declared their rank, and the business upon which they came.

I had also made up my mind to confer personally with no one but a functionary of the highest rank in the Empire, and consequently refused to see the Lieutenant Governor and Governor of Uraga, referring them to Commanders Buchanan and Adams and Lieutenant Contee, who had orders from me to receive them, and to reply under my instructions to their inquiries and verbal communications

I was well aware that the more exclusive I should make myself, and the more exacting I might be, the more respect these people of forms and ceremonies would be disposed to award me, hence my object, and the sequel will show the correctness of these conclusions.

[1] Called "Gorahama", "Gori-Hama", and "Gore-hama" in the Narrative and in Perry's "series of notes". For the location of this and other places named in the account of Commodore Perry, compare the chart entitled "Western Shore of the Bay of Yedo", one of the fourteen charts bound at the end of volume 2 of the Narrative and which, in the list preceding those charts, is No. 11 and called "Yedo Bay", with Hydrographic Office Chart No. 1291, "Tokyo Kaiwan".

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On anchoring off the city of Uraga a commercial place distant 27 miles from Yedo and the place of anchorage of the "Columbus" and "Vincennes",[1] and the British sloop of war "Mariner" [2] the ships were immediately surrounded by numerous boats, filled with men, many of whom attempted to get on board but were in obedience to my previous instructions repulsed. One of the most conspicuous of these boats having on board a person of distinction was permitted alongside the Flag Ship, and the officer being asked his rank and business answered that he was Vice Governor of Uraga,* and wished to see the officer commanding the Squadron, in view of learning his object in coming to Japan, he was told that I would confer with no one but a functionary of the highest rank.

He still urged the necessity of his coming on board to make some inquiries stating that he held the highest rank in the City, and was the proper person to visit the ship, but on being peremptorily refused admission he suggested as an alternative that he might be allowed to confer with an officer of rank corresponding with his own. To this proposition I consented after some intentional delay, and my aid Lieutenant Contee was appointed to receive him assisted by the interpreters Messrs Williams and Portman, one speaking Chinese and the other Dutch. The Vice Governor having an interpreter [3] with him who conversed fluently in the Dutch language.

A conference followed in which the Vice Governor propounded numerous questions very few of which were answered. He was merely told under instructions from me that I had been sent on a friendly mission to Japan with a letter from the President of the United States for the Emperor, and it was my desire to have a personal interview with a dignitary of the highest rank in order to make arrangements for the delivery of copies and translations of the documents with which I had been charged preparatory to the formal presentation of the originals.

He replied that Nangasaki was the only place according to the laws of Japan for negotiating foreign business, and it would be necessary for the Squadron to go there, to which he was told that I had come purposely to Uraga, it being near to Yedo and should not go to Nangasaki, that I expected the letter to be duly and properly received where I then was, that my intentions were perfectly friendly, but I would allow of no indignity, nor would I permit the guard boats, which were collecting about the ships, to remain where they then were, and if they were not immediately removed, I would disperse them by force; on having this interpreted to him, he suddenly left his seat, went to the gang way, and gave an order which caused most of the boats to return to the shore, but a few of them remaining in clusters, an armed boat from the ship was sent to motion them away, at the same time showing their arms, which had the desired effect, all of them disappearing, and we saw nothing more of them near the ships during the remainder of our stay. Here was the first important point gained.

The Vice Governor shortly after took his leave, saying that he had no authority to promise anything respecting the reception of the President's letter, but in the morning an Officer of higher rank would come from the city, who might probably furnish some further information.

In Williams, 48–50, are these two paragraphs regarding the day of arrival, July 8:

The ships anchored off Uraga about four o'clock, the two steamers being nearest the town. Many boats like scows, full of athletic, naked boatmen, came near. I asked one well-dressed man in the nearest to the gangway to send ashore and request a high officer to come off and take a letter to the Emperor. While talking a second official came up saying, "I talk Dutch," whereupon Mr. Portman told him that the Commodore only wanted to have a high officer to come aboard; he then pointed to the highest one there was to take such a commission, the second governor of Uraga, standing near him, and said that he could not venture to go ashore for any other. After some parley these two were admitted and received

[1] The squadron of Commodore James Biddle in 1846.
[2] In May 1849 (see Narrative, I, 44).
*His name was subsequently ascertained to be Sabroske [*Nakajima Saburosuke*].
[3] Hori Tatsunosuke (see Narrative, I, 234).

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by Lieutenant Contee in Captain Buchanan's cabin and told that the President had sent four ships on a peaceful errand to the Emperor with a friendly letter, which it was desired to send up to Yedo with dispatch by a proper person. No answer was given to the questions made about our course, men, equipage, etc., which they were told national vessels never described. The town of Uraga was said to contain 1800 houses, and it was eighteen *ri* or twenty-seven miles [1] to the capital. These officials said they would come to-morrow and receive the letter. The "commandant," as he called himself, had writing paper brought and made a report in official form of what he had heard, which he read to the interpreter, and then took leave. He was enjoined to send all boats away, as we would not go ashore, and they were therefore useless; this was done to as great a degree as one could expect as soon as they went away. Both these men were dressed in black crape upper cloaks and a sort of petticoat, having the coat-of-arms stamped in white on the arms and back; their long swords were taken off as they sat down. The commandant showed his official insignia, a kind of brass trapezium with a swinging vernier, the rim marked in Chinese figures; he had written rolls containing commands ordering us, as I suppose they would all ships to whom they were presented, to anchor where we were, but he did not offer to show them, as we were already anchored.

. . . . . .

About six o'clock the two officials came back with a third and were received as before. They made a long talk about the necessity of taking our letter to Nagasaki, the only place where Japanese laws allowed its reception, and that the governor on shore could not receive it; we asked them if he took the responsibility of refusing it, and said, that having received our orders to go to Yedo from our own ruler, we were as much obliged to obey as he was; further, that he had told us on the first visit that he would come off to-morrow with a higher officer to receive it, and that he must have known the laws as well then as he did now, two hours after, and if he did not come and get the letter we must take it ashore ourselves. These replies rather cut short their long talk, and they agreed to come for the letter to-morrow as they went over the side.

In the foregoing accounts of the events of July 8 there are references to Nakajima Saburosuke as "Vice Governor" or "second governor"; and Kayama Yezaimon, who visited on board the *Susquehanna* the next day, was styled "Governor of Uraga". Both designations are inexact renderings of their actual titles, for those two officers were *yoriki* or chief secretaries to the *bugyô* or governor. On July 14, when the President's letter to the "Emperor" was presented, two *bugyô*, Toda Izu-no-kami and Ido Iwami-no-kami, were present. Commodore Perry's rank was given as that of admiral, owing to the fact that the Japanese interpreters were unfamiliar with the title of commodore (see Narrative, I, 246, footnote).

The "series of notes" of Commodore Perry continues with this account of the visit of Kayama Yezaimon on July 9:

On the following morning the 9th, the Governor of Uraga Kayama Yezaimon came on board, thus giving the lie to the Vice Governor, who declared himself of the highest authority in the City, and as this officer was of superior rank to the visitor of the day before, I directed that he should be received by Commanders Buchanan and Adams and Lieutenant Contee, still refusing to receive myself any one, but a Counsellor of the Empire. (Cabinet Minister.)

The Governor after a long discussion in which he more than once declared that the Japanese laws made it impossible, that the letter should be received at Uraga, that the Squadron must go to Nangasaki, and even if the letter of the President were to be received at this place, a reply would be sent to Nangasaki, in answer to this he was told, that I would never consent to such arrangement, and would

[1] Eighteen *ri* equal about forty-four miles.

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persist in delivering it where I then was, that if the Japanese Government did not appoint a suitable person to receive the documents addressed to the Emperor, I would go on shore with a sufficient force, and deliver them whatever the consequences might be.

On this being communicated to him, he said, he would return to the city, and send a communication to Yedo, asking for further instructions, that it would require four days to obtain a reply, upon which he was told that I would wait until Tuesday the 12th, three days, when I should certainly expect a definite answer, accordingly he left the ship with the understanding, that there would be no necessity for any further discussion, until the time appointed for the delivery of the answer from Court should arrive.

At this interview the original letter of the President together with my letter of credence were shown to the Governor, encased as they were in the magnificent boxes which had been prepared at Washington, the exquisite workmanship and costliness of which evidently surprised His Excellency, and on leaving the ship, he made an offer for the first time of supplies of water and refreshments, but was told that we did not stand in need of anything.

I had directed that a surveying boat well manned and armed from each ship of the Squadron should commence at daylight, this morning the 9th, the survey of the harbour and Bay of Uraga, and thinking it quite possible they might meet with some resistance, I instructed Lieutenant Silas Bent in command of the surveying party not to go beyond the range of our guns, and caused a lookout to be kept upon them, that assistance might be sent should they be attacked, but though they were followed by numbers of Japanese boats, they did not on seeing our men well armed venture to molest them.

The Governor inquired what these boats were doing, and on being told they were surveying the harbour, he said it was against the Japanese laws to allow of such examinations, and he was replied to, that though the Japanese laws forbade such surveys, the American laws command them and that we were as much bound to obey the American as he was the Japanese laws. Here was a second and a most important point gained.

Williams, 50–52, has this report of the visit of the Japanese on board the *Susquehanna* on July 9:

About seven o'clock the highest officer at Uraga, named Yezaimon, attended by two interpreters and four or five others, came off; a parley took place off the gangway as to the object of the visit, rank of the officer, and person they could not see. At last Captain Buchanan was ready to receive them in his room, three only coming up. When seated, Yezaimon stated that he had come aboard to express his official inability to receive the letter and, though he himself was willing to take it, the laws of the land forbade it. It was replied that the ships would remain here till the letter was received, and that we wished to have a suitable person come aboard to take it; that we had been sent by the President to the Emperor and must execute our commission which weighed upon us as strictly as their laws did on them. Reference being made again to Nagasaki, they were told that we were sent here, and because it was near the palace. The originals of the letter and credence were then shown them, and also the package containing the translations; they showed little or no admiration at them, but wished to know the reason for sending four ships to carry such a box and letter to the Emperor; yet whether the reason assigned, "to show respect to him," fully met their doubts as to the reason for such a force could not be inferred from their looks. A courteous offer of water and supplies was made, which was declined, and Yezaimon added then that he would not come off again before the termination of the four days allowed to send to Yedo, a period they themselves set as the time required to send up and deliberate upon the matter. They were clearly informed of the meaning of a white flag, and also that visits were out of season till after the flags were hoisted in the morning.

During the whole of this interview the bearing of these Japanese was dignified and self-possessed. Yezaimon spoke in a clear voice and, through Tatsnoski, who put it into Dutch for Mr. Portman, I could make out almost all they said;

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but it would require considerable practice to speak that style, and I am not sorry that one of them knows Dutch so much better than I do Japanese, for I think intercommunication is likely to be more satisfactory. At the close of the interview the interpreter said that the officer present was the highest in Uraga, and his name Yezaimon; "What is the name of the captain of this ship?" He was told, and nothing could be more polite than the whole manner of this incident. While I was on the gangway before they came up one said, "Are you an American?"—"Yes, to be sure I am," I replied in a tone to intimate some surprise at the question, whereat there was a general laugh. Tatsnoski then asked my name and I his; Yezaimon had a brocade pattern of drawers, but a beautiful black gauze jacket, a *kami-shimo*, I suppose they call it. His crest was on his lackered hat also; the boatmen had a blue and white striped livery coat, and looked more decent than the naked fellows yesterday. A flag with 三 marked on it was explained to denote his being of the third rank.

The "series of notes" of Commodore Perry continues for July 10 and 11 as follows:

The following day the 10th was Sunday, and no communication was had with the Japanese authorities, a boat with some mandarin's accompanied by an interpreter came alongside, and requested to be admitted on board, but on being asked if they had any business with the Commodore, and they replying that they had no special business, but merely wished to have a talk, they were told by my order that they could not be received.

Monday the 11th, the surveying boats were despatched early this morning higher up the Bay, and Commander Lee in the Mississippi was directed to get his ship under way to protect them.

The Governor on seeing the Mississippi going higher up than any foreign vessel had ever before ventured came on board, as I expected he would, though he was told on Saturday that there would be no necessity for further discussion until the reply from Yedo was received.

I had purposely sent the Mississippi and the boats on this service, being satisfied that the very circumstance of approaching nearer to Yedo with a powerful ship would alarm the authorities, and induce them to give a more favourable answer to my demands, and so it happened the Governor pretending that his visit to the ship was to bring information that it was very probable the letters (meaning as I then supposed the translations of the originals) would be received on the following day, and forwarded to Yedo; but he evidently came to ascertain for what purpose the Mississippi and the surveying boats had ascended the Bay and soon put the question.

Anticipating such an inquiry, I directed that he should be informed that unless the business which brought the Squadron to these waters was arranged at this time, I should return in the ensuing spring with a larger force, and as the anchorage in front of Uraga was not convenient or safe, I was desirous of seeking a more favorable situation nearer to Yedo, which would make our communications with that city more convenient.

This is Williams' report of the conversation of the afternoon of July 11 on board the *Susquehanna* (Williams, 54):

While this [surveying] party was away, Yezaimon and the interpreter Tatsnoski came off and, after being seated in the cabin and compliments passed, he told Captain Buchanan that it was probable that the letter would be received to-morrow, and that if he came off it doubtless would be taken. We expressed pleasure at hearing this, reiterated our amicable intentions in coming here and told him we expected that his government would receive us in a friendly way. The real design of the visit then was hinted at by an allusion to the steamer, and they were told her object simply was to sound the bay, so that, if we came here again, we should know where was the proper anchorage, and that she was to return in the evening. The two gentlemen were in good spirits, took a glass of wine and seemed pleased at the offer of examining the vessel when they came

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to-morrow. They soon rose to leave and were unusually polite at departure; one of their flags had a figure six on it.

The "series of notes" of Commodore Perry continues with this report of interviews on July 12:

Tuesday July 12th. This being the day on which a reply was to be received from Yedo, the Governor was on board by 10 AM accompanied by two interpreters.

But previously to his arrival I had written the following letter to the Emperor, not supposing he would so readily accede to my demands, and appoint a Cabinet Minister to meet me, as will be seen by the events of the day that he had already done:

"US STEAM FRIGATE SUSQUEHANNA
Uraga, July 12th, 1853.

"The Commander in Chief of the United States Naval Forces in these "seas, being invested with full powers to negotiate Treaties, is desirous of "conferring with one of the Highest Officers of the Empire of Japan, in view "of making arrangements for the presentation of the original, of his letter "of credence, as also the original of a letter with which he is charged addressed "to His Imperial Majesty by the President of the United States.

"It is hoped that an early day will be appointed for the proposed inter-"view."

"To his Imperial Majesty The EMPEROR OF JAPAN.

The Governor then went on to say, that there had been a misapprehension, as to the delivery of the translations of the papers before the originals had been received, although I was certain there had been no such misunderstanding, nevertheless, I consented after there had been much discussion to deliver the translations and originals, as also a letter from me to the Emperor at the same time, provided the Emperor should appoint a suitable officer to receive them at my hands, and I repeated that I would consent to deliver them to no other than a dignitary of the highest rank. The Governor then said that a building would be erected on shore for the reception of myself and suite, and a high Official personage especially appointed by the Emperor would be in attendance, to receive the letters, that no answer would be given here, but it would be transmitted to Nangasaki, through the Dutch or Chinese Superintendents. This being reported to me, I wrote the following memorandum, and directed it to be translated into Dutch and fully explained to the Governor.

"The Commander in Chief will not go to Nangasaki, and will receive "no communication through the Dutch or Chinese."

"He has a letter from the President of the United States to deliver to the "Emperor of Japan or to His Secretary of Foreign Affairs, and he will deliver the "original to none other if this friendly letter of the President to the Emperor "is not received and duly replied to, he shall consider his country insulted "and will not hold himself accountable for the consequences.

"He expects a reply of some sort in a few days and he will receive such "reply no where but in this neighbourhood."

Upon receipt of this he went on shore probably to consult some higher authority, as doubtless there were more than one high Officer of the Court at Uraga, secretly directing the negotiations. He returned in the afternoon to the ship with the assurance that a very distinguished personage properly accredited by the Emperor would be appointed to receive me on shore the day after tomorrow, and being asked what proof I should have of his rank and the validity of his credentials, he said that he would bring on board certified copies of the original documents in order that I should be fully satisfied.

He was then asked where the reception was to take place, to which he replied at a small village (Gore-hama) situated at the head of the Bay since named

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Reception Bay on our Chart, about a Japanese mile from Uraga. The enquiry was then made why the meeting could not take place in one of the houses or forts opposite the ships, to which he replied that he would ascertain if such arrangement could be made and would give an answer in the morning, saying he should be on board early to bring the promised papers and to announce the arrival of the dignitary who had been appointed to receive me.

The surveying boats were actively engaged all this day.

In Williams, 54–56, is this report of the interviews of July 12,[1] at neither of which was Commodore Perry present:

About ten o'clock Yezaimon (whose whole name is Kayamarin Yezaimon 香山連榮清門, with an addition of 永孝, Naga-nori), and the two interpreters came in a large boat to say that the letter would be received, but that he could not tell exactly the day. This led to explanation, and I was not surprised to see that in their minds the copies had been confounded with the originals, and that they referred to the latter and we to the former; that they had made an appointment of an envoy to take those, while we supposed them to be hesitating about the transmission of these. The copies were shown them, and Yezaimon refused to take them, preferring to make further application to his superiors to learn their will. The conference was very long from the apprehensions of our visitors and their constant reference to law, so that at last the Commodore sent in his note that he would never go to Nagasaki nor receive aught through the Dutch or Chinese, that he would deliver the originals only to an officer of equal rank or to the Emperor, and that he must see his credentials. It was assured us that the envoy was a high officer, and I suggested that he was the prince of Sagami in whose jurisdiction Uraga lies. A proper place was now preparing for receiving the letter, for there was no public hall suitable in such a place. The need of first receiving the copies was insisted on, and that it was indispensable to meet an equal; so, after three hours' talk and receiving a paper in Dutch with these points stated clearly, they went ashore to inquire about forwarding the copies, promising to return in an hour or so. During this long confabulation I tried to get some information of a general nature, but they were rather skittish, refusing to tell by pleading ignorance even of the town north of the point, of the name of the opposite town across the bay, and such like matters.

It was four o'clock before the trio came aboard and then to declare decidedly that they had all along understood that the originals were to be received, and that an envoy had come whose credentials should be presented as evidence of his true character beforehand. The principal points were then stated in writing—that the Commodore would deliver the originals and copies together at any designated place on shore, that he would return for an answer, that he must see the credentials of his host, that he should come ashore with a suitable escort, and that no conference respecting the contents of the papers was expected when they were presented, but merely a ceremonial visit. The constant fear on their part evidently was that we meant more than we said and had designs sub rosa; they were referred to the letters as containing all we came for and told that these must be answered or consulted; hints were also given of our going up the bay.

[1] The misunderstanding of the Japanese calendar by Dr. Williams began at this time; he wrote (Williams, 57):

> From the interpreter Tokoshiuro, 立石得十郎光定, I learned that the *nengo* of the present *cubo* [*Shogun*] is Kayei, 嘉永, and this his sixth year; his predecessor was Choka, 弘化, and before him was Tenpo, 天保, who ruled when we were here in 1837 [with the *Morrison*]. These monarchs do not reign so long as their brother emperors at Peking, and I suspect have less power and influence in the state; if the story be true that they are required to resign whenever they are in the minority with the state council on public questions, it is no wonder their reigns are brief.

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A verbatim report of the conversation of the afternoon of July 12, from Narrative, I, 245–47, is here inserted:

CONVERSATION.

Present Captains Buchanan and Adams, Lieutenant Contee, Flag Lieutenant, and Yezaiman, governor of Uraga, and interpreters.

Yezaiman. As it will take a great deal of time to send up the copies of the letters first, and the originals afterward, I propose that the originals and the copies be delivered together, when the high officer comes. The governor and the high officer will do their best to entertain the Admiral and give him a suitable reception.

Capt. Buchanan. That is not the object of the Commodore: he wishes these communications to go because there is among them a letter to the Emperor from himself, which he desires to send to Yedo with the copies. The reply to the President's letter is not of so much consequence just now. We want a reply to the Commodore's letter which is in the package.

Yezaiman. If you send the original letter we will reply to it as soon as possible. We are here for the purpose of receiving the letter from the President to the Emperor, but now you speak of a letter from the Admiral to the Emperor.

Capt. B. The letter from the Admiral is in the package containing the copies of the President's letter. It states that he has in his possession the original letter of the President, and is empowered by the President to deliver it in person to the Emperor, or to a high officer of equal rank with himself, appointed by the Emperor.

Yezaiman. We are very sorry that you separate the two; it would be better to send the originals at once with the copies.

Capt. B. That is impossible. The letter of the Admiral states that he has the original letter of the President, and is empowered to deliver it, either in person or to an officer of his own rank; when the Emperor is aware of the fact that the Admiral has the letter, then he will appoint an officer of the same rank to receive the original, and the Admiral will return at some future day to receive the answer.

Yezaiman. Can you not contrive to manage it in such a way that the original letter may be sent with the copies?

Capt. B. It cannot be done.

Yezaiman. When the ships first came it was not mentioned that the copies must be sent first, and not the original letters; and now you mention it.

Capt. B. During the first visit you made here, you were shown the original letters, and also the copies, and the same statement was then made by us as now.—(*After a pause Captain B. resumed.*)—Will the high officer who will come here be accredited by the Emperor to receive the letters from the Admiral?

Yezaiman. He has the authorization of the Emperor.

Capt. B. Will he have any proof to show that he is thus authorized?

Yezaiman. Yes, he can prove it.

Capt. B. One of the letters is from the President, informing the Emperor of Japan that Commodore Perry is sent as a high officer appointed by himself, and Commodore Perry will expect similar credentials on the part of the officer appointed to speak with him.

Yezaiman. He will receive the letter, but cannot enter into any negotiations.

Capt. B. What is the rank and official title of the officer who is appointed?—(*While the interpreter is writing the title of the officer in question, in Chinese characters, Captains Buchanan and Adams retire to consult with the Commodore.*)

Lieutenant Contee. When will the high officers be ready to receive the letter?

Interpreter. To-morrow or the day after.

Lieut. C. Where is the house?

Interpreter. On the shore.

Lieut. C. Can you point it out from here?

Interpreter. It cannot be seen.

Lieut. C. (*repeating his last question.*) Can you point it out from here?

Interpreter. It is on the other side of the hills—you can see it from another position.

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Lieut. C. What was the name of the officer who came on board on the day of our arrival?

Interpreter. Nagazhima Saberoske.

(*Captains Buchanan and Adams now returned.*)

Captain Buchanan. Captain Adams and I have just had a conversation with the Admiral.* He says that, since you appear to have wholly misunderstood the matter about the letter, if you can show proof that an officer of the proper rank is appointed to receive them, he will waive the matter in dispute, and deliver the original at the same time with the copies. But he requires strict evidence that the officer who shall meet him shall be of the necessary rank, and that he has been specially appointed for the purpose by the Emperor.

Yezaiman. Nagasaki is the proper place to receive letters from foreign nations, and because Uraga is not an appropriate place, the officer will not be allowed to converse, but only to receive the letters.

Capt. B. He is only desired to receive the letters. Will he come on board, or will the letters be delivered on shore?

Yezaiman. He will not come on board, but will receive them on shore.

Capt. B. Before the letters are delivered, the credentials of the officer must be translated into Dutch, signed with the proper signatures, and sent on board the Admiral.

Yezaiman. He will be accredited to receive the letter, but cannot speak.

Capt. B. He will not be desired to speak, but he must have a paper signed by the Emperor, stating that he is empowered to receive the letters.

Yezaiman. He will have a document properly signed.

[*Captain Buchanan now directed Mr. Portman to write in Dutch the declaration he had made, and to give it to the interpreter.* The following is the English version: "There has been a great deal of misunderstanding about receiving the original letter and the translated copies, whether to be received together or separately. The Admiral now is willing to meet with a high officer of Yedo, holding rank in Japan corresponding to the rank of Admiral in the United States. This officer shall be accredited, viz: possess a writing properly signed by the Emperor, authorizing him to receive the said letters. Of this writing or letter of credence shall be made a copy, translated into Dutch, and the same copy be transmitted to the Admiral before the interview takes place.

"At this interview there shall be no discussions whatever; no more than an exchange of civilities and compliments.

"The Admiral does not insist upon receiving an answer to the original letter of the President immediately, but will come back for that purpose after some months."] [1]

Yezaiman. The high officer will not be allowed to speak on the matter; only to make and return compliments.

Capt. B. That is all that is necessary.

Yezaiman. The high officer will be here the day after to-morrow, to receive the letter on shore.

Capt. B. At what hour?

Yezaiman. At eight o'clock in the morning. As soon as we see the flag hoisted we will come on board the ship.

Capt. B. Will the high officer bring the copy of the letter empowering him to act, properly certified?

Yezaiman. He will bring it.

Interpreter. The governor is very grateful for his kind reception on board.

Capt. B. We are very happy to see him. Where is the place of reception?

Interpreter. I can point out the place, but the house cannot be seen.

Yezaiman. Will the Admiral await the Emperor's answer to the President's letter?

Capt. B. No; the Admiral will not now wait for it.

Yezaiman. When will he come for a reply?

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*"It is proper to remark that the title Admiral was necessarily used at these interviews, to designate your rank, as we found Yezaiman's interpreters were familiar with it, and were entirely unacquainted with that of Commodore."—*Extract from Captain Adams' official report to Commodore Perry.*

[1] The brackets are in the Narrative.

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Capt. B. He will return in a few months to receive the Emperor's reply.

Yezaiman. I would desire a statement in writing to that effect. [There being no satisfactory answer to this, Yezaiman continued.] [1] The high officer who receives the letter of the President will give a receipt for it, as an assurance that it has been received.

Capt. B. Can you not appoint a place nearer the ship? The distance is very great for the men to pull in a boat. The Admiral will be satisfied to meet the high officer in a tent, or in one of the forts nearer the ships. The interview will not be long.

Interpreter. The house is not far off; it is less than a Japanese mile.

Capt. B. Can you not arrange to have it nearer the ships?

Interpreter. The governor says he will endeavor to arrange it.

Capt. B. Can you let us know to-morrow morning?

Interpreter. Yes.

The conference here ended.

Kayama Yezaiman and his companions seemed to be in the highest good humor, and readily availed themselves of the proffered courtesies of the officers of the Susquehanna, which were accepted and responded to in a manner indicating the most polished good breeding.

The "series of notes" of Commodore Perry continues as follows for July 13:

Wednesday, July 13th The Governor came on board in the afternoon of this day apologizing for not being earlier by saying that the High Officer from Yedo had only just arrived; he brought with him the original order of the Emperor addressed to the functionary who had to receive me, as also a copy and translation of the same in Dutch, and a certificate of his own verifying the authenticity of the appointment he also said that the person appointed by the Emperor had no power to enter into discussion with me, but was empowered merely to receive the papers, and carry them to His Sovereign.[2]

Here follow translations of the papers referred to.

Translation of Letter of Credence given by the Emperor of Japan to His Highness Toda, Prince of Idzu.

"I send You to Uraga to receive the letter of the President of the United "States to me, which letter has recently been brought to Uraga by the Ad- "miral, upon receiving which you will proceed to Yedo, and take the same "to me.

6th month in 1853. Here is the Emperor's Seal.

Translation of certificate of Kayama Yezaiman Governor of Uraga, verifying the authenticity of the Emperor's letter and seal.

"You can rest assured that the high Officer who has been accredited by the Emperor of Japan himself, and who consequently comes here to Uraga from Yedo for the purpose of receiving the original and translated letters is of very high rank, equal to that of the Lord Admiral I do assure that.

(Signed) KAYAMA YEZAIMAN.

The Governor remarked that he had made enquiry as to the practicability of changing the place of meeting, and said that a suitable building had already been constructed and it would be inconvenient to make a change, this reply I had expected, and was prepared for, and not knowing whether any treachery was

[1] The brackets are in the Narrative.

[2] The following is from Narrative, I, 249: "The Emperor's letter was short, and was certified by a large seal attached to it. This imperial epistle, which was wrapped in velvet, and enclosed in a box made of sandal-wood, was treated by the governor with such reverence that he would allow no one to touch it."

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intended had ordered the surveying party to examine the little Bay at the head of which the building had been erected for my reception. They promptly performed the service, and reported that the ships could be brought within gun shot of the position where they observed great numbers of people employed in the Completion of the building, transporting furniture etc accordingly I directed the Squadron to be removed in the morning to an anchorage in line covering the whole Bay, being determined to be prepared against the well known duplicity of the people with whom I had to deal the object of Selecting the place of meeting not being clearly explained to my mind

The following is the relevant paragraph from Williams, 57–58, for July 13, 1853:

The officials did not reach the ship till four o'clock to-day, alleging the non-arrival of the envoy from Yedo until late in the day. Yezaimon brought the credentials of this commission and a translation in Dutch, but no copy in Japanese or Chinese, so that it is impossible to verify the certainty of this translation, though I do not suppose any deception is to be feared. He was rather sensitive when I came up to him to see the paper, and stipulated beforehand that it was not to go out of his hands. The seal was a small round one in the seal character and was stamped once in halves by folding the paper over so as to bisect the impression; the paper was common and the whole was carried in a case in the bosom of the dress. I suggested the propriety of having a copy in the original, but it was overruled. Many points respecting the interview were settled; the place was at Kuri-yama around a point below Uraga, and the size and composition of the escort was inquired into. One difficulty on their part came out, which was the trouble of seating so many foreigners in a country where the people all squatted, but we told them it was unimportant and the Commodore would take the same accommodation the envoy had.

These eight paragraphs regarding the conference of July 13 are from Narrative, I, 250–51:

The governor, in the course of the conference, took care to state that the person appointed by the Emperor had no authority to enter into discussions with the Commodore, but was merely empowered to receive the papers and convey them to his sovereign. He also stated that he had made inquiry as to the practicability of changing the place of meeting, and said that, as a suitable building had already been erected, it would be inconvenient to change. The Commodore was prepared for this reply, and as he could not know whether any treachery was intended or not, he had determined to provide, as far as he could, against every contingency, and had therefore ordered the surveying party to examine the little bay at the head of which the building had been erected for his reception. The officer sent upon this service promptly performed the duty, and reported that the ships could be brought within gun-shot of the place, where great numbers of the people had been observed employed in the completion of the building, in transporting furniture, and in otherwise preparing for the occasion.

The governor offered to accompany a boat to the place appointed for the reception, but this was declined, and he was informed that, as it did not befit the dignity of the Commodore to proceed a long distance in a small boat, the squadron would be removed to a position nearer the building designed for the reception. It was then agreed that the Commodore and his party should leave the ships between eight and nine o'clock the next day, (Thursday,) although the Japanese seemed particularly anxious that the interview should take place at an earlier hour, assigning as a reason that the heat of the day might thus be avoided.

The question was now asked as to how many officers would accompany the Commodore on the occasion, to which they received the answer that he would be followed by a large retinue, since it was the custom of the United States that when an officer of high rank bears a communication from the President to the sovereign of another country, for him to go with such an attendance as will be respectful to the power to which he is sent. Accordingly, the governor was

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informed that all the officers who could be spared from the squadron would accompany the Commodore, as the greater number would imply the greater compliment.

In the course of the conference, the Japanese dignitaries showed their great regard for ceremony by adverting to various minute points of etiquette in reference to the approaching reception. They announced that all the Japanese officers would be clothed in full official costume, and not in the dresses worn on ordinary occasions. They seemed to be considerably troubled because they would not be able to seat their visitors, on the morrow, in the same kind of arm chair as that then occupied by themselves in the cabin, and apologized for not having any such. They were no less anxious on the score of the wines and brandies, and begged that they might be excused for not offering the same as they had been regaled with, since the country did not possess them. They were told to dismiss their solicitude on these points; that, as the practice of hospitality, and manners and customs, necessarily differed in different countries, it was not reasonable to expect to find American habits prevailing in Japan; and that the Commodore would be satisfied to be seated in the same manner as the dignitary appointed to meet him, while the other American officers would content themselves with such seats as were provided for their equals in rank among the Japanese.

They then made some inquiries in regard to the minute details of the approaching ceremony, as to whether the Commodore would present the President's letter directly from his own hand into that of the Japanese commissioner, whose name and title, by the way, were now announced as Toda-Idzu-no-Kami, First Counsellor of the Empire.

It was asked whether the Commodore would immediately return to his ship after delivering the letter, and also when he would come back to Japan to receive an answer. The Chinese interpreter, Mr. Williams, showed them a map or plan of Yedo, which they said must have been drawn some seventy years ago, as the capital had changed much since the plan was made, having greatly increased in size, and much improved. They, however, recognized on the plan various conspicuous places, and pointed them out very readily, as if politely willing to gratify the natural curiosity of their company.

The whole conference had lasted about two hours and a half, and when the Japanese functionaries rose to depart it was already evening. They left the ship with the usual polite courtesies, bowing, as usual, at every step; and the chief interpreter, Hori Tatznoske, who had evidently a great aptitude for the acquisition of foreign languages, mustered English enough to say very distinctly as he departed, "Want to go home."

The Commodore, in preparation for the coming event of the next morning, summoned his captains, from the several vessels of the squadron, on board the flag-ship. Orders were then given that the vessels should be removed, early in the morning, to an anchorage in line, covering the whole bay, in front of the place of reception, * as the Commodore was resolved to be prepared against any possible treachery or duplicity on the part of the people with whom he had to deal, and as the object of the Japanese in the selection of this place of meeting was not very apparent to his mind. It was also ordered that all the officers who could possibly leave the ships should appear in full uniform, and accompany the Commodore to the reception, in order that he might present as imposing a retinue as practicable. The surveying boats had been kept busy during the day, completing their observations, and were allowed to proceed with their work without molestation from the native authorities.

The "series of notes" of Commodore Perry continues with this account of his reception on shore on July 14:

Thursday July 14th. This being the day appointed for my reception on shore and every preparation having been made for landing a formidable escort, composed of officers seamen and marines from the respective ships about 400 in number; all well armed and equipped, and being ready for disembarkation the two steamers moved to a position commanding the proposed landing place (the sloops of war

*Marked on the chart as "Reception Bay."

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not being able to move for want of wind) and shortly after the detachments forming the escort were in the boats and on their way to the shore where they landed and formed, and were immediately followed by me.

The whole shore of the Bay extending more than a mile was crowded with Japanese troops from five to seven thousand drawn up under arms; these troops were composed of cavalry, artillery, infantry and archers, some of the infantry with flint muskets others with match locks.

On landing I proceeded at once to the building erected for the purpose, and was there received by the Prince of Idzu first Counsellor of the Emperor and his Coadjutor the Prince of Iwami; to the former of these I presented the Presidents letter my letter of credence and three communications from myself together with transcripts of the same in the English, Dutch and Chinese languages for which the Prince of Idzu gave me a receipt.

The Princes were attended by the Governor of Uraga the Chief Interpreter and a Secretary.

As it was understood that there was to be no discussion at this meeting, I remained but a short time taking my departure and embarking with the same ceremony with which I had landed.

Translation of Receipt given by the Princes of Idzu and Iwami to Commodore Perry.

"The letter of the President of the United States of North America and copy are hereby received and delivered to the Emperor. Many times it has been communicated that business relating to foreign countries cannot be transacted here in Uraga but in Nangasaki; now it has been observed that the Admiral in his quality of Ambassador of the President would be insulted by it; the justice of this has been acknowledged consequently the abovementioned letter is hereby received in opposition to the Japanese law.

Because the place is not designed to treat of anything from foreigners, so neither can conference nor entertainment take place. The letter being received You will leave here.

the 9th of the sixth month.

(Fac Simile of Signature)

"The above is a literal translation from the dutch, in which language the conferences were held; and into which the receipt of the Chief Counsellors the Princes of Idzu and Iwami were doubtless badly translated from the Japanese by their interpreter

The following would probably be the correct translation from the Japanese.[1]

"The letter of the President of the United States of North America and copy are hereby received, and will be delivered to the Emperor.

It has been many times intimated that business relating to foreign countries cannot be translated here in Uraga but at Nangasaki; nevertheless as it has been observed that the Admiral in his quality of Ambassador of the President would feel himself insulted by a refusal to receive the letter at this place the justice of which has been acknowledged, the above mentioned letter is hereby received in opposition to the Japanese law.

As this is not a place wherein to negotiate with foreigners so neither can conferences nor entertainment be held Therefore as the letter has been received You can depart."

(Fac Simile of Signature)

[1] Still another rendering is in this paragraph from Williams, 64:

The receipt given by the two envoys was to this purport: "According to Japanese law it is illegal for any paper to be received from foreign countries except at Nagasaki, but as the Commodore has taken much trouble to bring the letter of the President here, it is notwithstanding received. No conversation can be allowed, and as soon as the documents and the copy are handed over you will leave." The Japanese original is written on very thick paper made from the mulberry (Broussonnetiâ); the last sentence of it intimated they were to make sail immediately.

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"To show these Princes how little I regarded their order for me to depart on getting on board I immediately ordered the whole Squadron underway not to leave the Bay as they doubtless expected but to go higher up, having determined to examine the channel towards Yedo being satisfied that the employment of so large a force in surveying service and so near to the Capital, and in waters hitherto unknown to foreigners would produce a decided influence upon the pride and conceit of the Government, and cause a more favourable consideration of the President's letter.

The four ships stood off in a line abreast, running lines of soundings across the Bay, until they passed out of sight of Uraga, and at night anchored at a place I have called "American anchorage" ten miles higher than any foreign vessel had ever before ascended.

From the account of Dr. Williams in his journal for July 14 these three paragraphs are excerpted (Williams, 61–63):

On reaching the front of the markee the two envoys were seen seated on campstools on the left side of a room, twenty feet square or so, matted and covered with red felt; four campstools were ranged on the right side, and a red lacquered box between them. The chief envoy, 戶田伊豆守, Toda, Idzu no kami (Toda, prince of Idzu), and his coadjutor, 井戶石見守, Ido, Iwamè no kami (Ido, prince of Iwamè) rose as the Commodore entered, and the two parties made slight bows to each other. The boys laid the boxes on the floor and the two blacks came in and opened them. They were taken out and opened upon the lacquered box, and the packet containing the copies and translations presented by Mr. Contee. Tatsnoske and Yezaimon were both on the floor, and the former commenced the interview by asking if the letters were ready to be delivered. When he made known the reply he put his head nearly to the floor in speaking to Yezaimon who, on his knees, informed the envoy in a whisper. The receipt for them in Dutch and Japanese was then delivered to Mr. Portman, and the originals themselves opened out in the boxes as they lay. Soon after, Commodore Perry said that in two or three days he intended to leave for Lewchew and China, and would take any letters, etc., for the envoys. This produced no acknowledgment on their part, and he then added that there was a revolution in China by insurgents who had taken Nanking and Amoy, and wished to introduce a new religion. "It will be better not to talk about revolutions at this time," was the significant reply, and proper one too, for I thought it very mal-apropos to bring in such a topic. Yet one might regard it with interest as ominous of the important changes which might now be coming on the Japanese, and of which this interview was a good commencement.

Conversation being thus stopped and no signs of any refreshment appearing, there was nothing else to do than to go. The contrast between its interlocutors was very striking. In the front was a group of foreign officers and behind them the picturesque looking, shaven-pated Japanese in relief against the checked screen; on the left a row of full-dressed officers with swords, epaulettes, etc., all in full lustre; on the right the two envoys and a secretary, with two more plainly dressed men on their knees between the two rows. To describe the robes of these two envoys is difficult. The upper mantilla was a slate-colored brocade kind of silk, made stiff at the shoulders so as to stick out squarely; the girdle a brown color, and the overall trowsers of purplish silk; the swords were not very rich-looking. The coat-of-arms was conspicuous on the sleeves, and some of the undergarments appearing, gave a peculiarly harlequin-like look to his dress, to which the other envoy was accordant. They were immovable and never stirred or hardly spoke during the whole interview; one who tarried a little as we came out said that they relaxed in their stiffness as soon as we had gone, apparently glad that all was over. I got the impression that the two high men had pursed themselves up to an attitude, and had taken on this demure look as part of it, but others looked on it as a subdued manner as if afraid. The re-embarkation took place gradually, no one being in much of a hurry, and I began to talk to the people and invited two of them on board to see the steamer and a revolver. One man wished to know if the women in America were white; another, how he could learn strategy, to which I replied, "Only by your going abroad or letting us come

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here." I asked him why there was no music, to which he answered that it was very poor. Considerable curiosity was manifested in comparing swords, and some exchanges were proposed; altogether, this part of the interview was far the pleasantest to both parties, and I suspect the Japanese were sorry to see the show end so soon. Many picked up shells and pebbles to remember the spot, and by one o'clock everybody was back to his place.

Two boats full of people came alongside soon after and stayed on board while we steamed back to Uraga. Yezaimon especially took much interest in seeing the working of such stupendous machinery and inquiring into the manner of turning the wheels. All was made plain as we could explain it, though I fear the ideas were very crudely expressed, for I did not know their language well enough, and Portman seemed not to know the machine well enough.

The following report of the ceremonial meeting of July 14 is from Narrative, I, 252–61:

Thursday, (July 14) opened with a sun that was somewhat obscured at early dawn, but which soon came out brightly and dispelled the fogs and clouds which overhung the land and seemed to give an inauspicious aspect to the occasion. As the atmosphere cleared and the shores were disclosed to view, the steady labors of the Japanese during the night were revealed in the showy effect on the Uraga shore. Ornamental screens of cloth had been so arranged as to give a more distinct prominence, as well as the appearance of greater size to the bastions and forts; and two tents had been spread among the trees. The screens were stretched tightly in the usual way upon posts of wood, and each interval between the posts was distinctly marked, and had, in the distance, the appearance of panelling. Upon these seeming panels were emblazoned the imperial arms, alternating with the device of a scarlet flower bearing large heart-shaped leaves. Flags and streamers, upon which were various designs represented in gay colors, hung from the several angles of the screens, while behind them thronged crowds of soldiers, arrayed in a costume which had not been before observed, and which was supposed to belong to high occasions only. The main portion of the dress was a species of frock of a dark color, with short skirts, the waists of which were gathered in with a sash, and which was without sleeves, the arms of the wearers being bare.

All on board the ships were alert from the earliest hour, making the necessary preparations. Steam was got up and the anchors were weighed that the ships might be moved to a position where their guns would command the place of reception. The sailing vessels, however, because of a calm, were unable to get into position. The officers, seamen, and marines who were to accompany the Commodore were selected, and as large a number of them mustered as could possibly be spared from the whole squadron. All, of course, were eager to bear a part in the ceremonies of the day, but all could not possibly go, as a sufficient number must be left to do ships' duty. Many of the officers and men were selected by lot, and when the full complement, which amounted to nearly three hundred, was filled up, each one busied himself in getting his person ready for the occasion. The officers, as had been ordered, were in full official dress, while the sailors and marines were in their naval and military uniforms of blue and white.

Before eight bells in the morning watch had struck, the Susquehanna and Mississippi moved slowly down the bay. Simultaneously with this movement of our ships, six Japanese boats were observed to sail in the same direction, but more within the land. The government striped flag distinguished two of them, showing the presence of some high officials, while the others carried red banners, and were supposed to have on board a retinue or guard of soldiers. On doubling the headland which separated the former anchorage from the bay below, the preparations of the Japanese on the shore came suddenly into view. The land bordering the head of the bay was gay with a long stretch of painted screens of cloth, upon which was emblazoned the arms of the Emperor. Nine tall standards stood in the centre of an immense number of banners of divers lively colors, which were arranged on either side, until the whole formed a crescent of variously tinted flags, which fluttered brightly in the rays of the morning sun. From the tall standards were suspended broad pennons of rich scarlet which swept the ground with their flowing length. On the beach in front of this display were ranged regiments of

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soldiers, who stood in fixed order, evidently arrayed to give an appearance of martial force, that the Americans might be duly impressed with the military power of the Japanese.

As the beholder faced the bay, he saw on the left of the village of Gori-Hama a straggling group of peaked-roofed houses, built between the beach and the base of the high ground which ran in green acclivities behind, and ascended from height to height to the distant mountains. A luxuriant valley or gorge, walled in with richly wooded hills, opened at the head of the bay, and breaking the uniformity of the curve of the shore gave a beautiful variety to the landscape. On the right some hundred Japanese boats, or more, were arranged in parallel lines along the margin of the shore, with a red flag flying at the stern of each. The whole effect, though not startling, was novel and cheerful, and every thing combined to give a pleasing aspect to the picture. The day was bright, with a clear sunlight which seemed to give fresh vitality alike to the verdant hill-sides, and the gay banners, and the glittering soldiery. Back from the beach, opposite the centre of the curved shore of the bay, the building, just constructed for the reception, rose in three pyramidal shaped roofs, high above the surrounding houses. It was covered in front by striped cloth, which was extended in screens to either side. It had a new, fresh look, indicative of its recent erection, and with its peaked summits was not unlike, in the distance, a group of very large ricks of grain.

Two boats approached as the steamers neared the opening of the bay, and when the anchors were dropped they came alongside the Susquehanna. Kayama Yezaiman, with his two interpreters, came on board, followed immediately by Nagazima Saboroske and an officer in attendance, who had come in the second boat. They were duly received at the gangway and conducted to seats on the quarter deck. All were dressed in full official costume, somewhat different from their ordinary garments. Their gowns, though of the usual shape, were much more elaborately adorned. The material was of very rich silk brocade of gay colors, turned up with yellow velvet, and the whole dress was highly embroidered with gold lace in various figures, among which was conspicuously displayed on the back, sleeves, and breast the arms of the wearer. . . .

A signal was now hoisted from the Susquehanna as a summons for the boats from the other ships, and in the course of half an hour they had all pulled alongside with their various officers, sailors, and marines, detailed for the day's ceremonies. The launches and cutters numbered no less than fifteen, and presented quite an imposing array; and with all on board them, in proper uniform, a picturesque effect was not wanting. Captain Buchanan, having taken his place in his barge, led the way, flanked on either side by the two Japanese boats containing the governor and vice-governor of Uraga with their respective suites; and these dignitaries acted as masters of ceremony and pointed out the course to the American flotilla. The rest of the ships' boats followed after in order, with the cutters containing the two bands of the steamers, who enlivened the occasion with their cheerful music.

The boats skimmed briskly over the smooth waters; for such was the skill and consequent rapidity of the Japanese scullers that our sturdy oarsmen were put to their mettle to keep up with their guides. When the boats had reached half way to the shore the thirteen guns of the Susquehanna began to boom away and re-echo among the hills. This announced the departure of the Commodore who, stepping into his barge, was rowed off to the land.

The guides in the Japanese boats pointed to the landing place toward the centre of the curved shore, where a temporary wharf had been built out from the beach by means of bags of sand and straw. The advance boat soon touched the spot, and Captain Buchanan, who commanded the party, sprang ashore, being the first of the Americans who landed in the Kingdom of Japan. He was immediately followed by Major Zeilin, of the marines. The rest of the boats now pulled in and disembarked their respective loads. The marines (one hundred) marched up the wharf and formed into line on either side, facing the sea; then came the hundred sailors, who were also ranged in rank and file as they advanced, while the two bands brought up the rear. The whole number of Americans, including sailors, marines, musicians, and officers, amounted to nearly three hundred; no very formidable array, but still quite enough for a peaceful occasion, and composed of very vigorous, able-bodied men, who contrasted strongly with the smaller and

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more effeminate looking Japanese. These latter had mustered in great force, the amount of which the governor of Uraga stated to be five thousand; but, seemingly, they far outnumbered that. Their line extended around the whole circuit of the beach, from the further extremity of the village to the abrupt acclivity of the hill which bounded the bay on the northern side; while an immense number of the soldiers thronged in, behind and under cover of the cloth screens which stretched along the rear. The loose order of this Japanese army did not betoken any very great degree of discipline. The soldiers were tolerably well armed and equipped. Their uniform was very much like the ordinary Japanese dress. Their arms were swords, spears, and match-locks. Those in front were all infantry, archers and lancers; but large bodies of cavalry were seen behind, somewhat in the distance, as if held in reserve. The horses of these seemed of a fine breed, hardy, of good bottom, and brisk in action; and these troopers, with their rich caparisons, presented at least a showy cavalcade. Along the base of the rising ground which ascended behind the village, and entirely in the rear of the soldiers, was a large number of the inhabitants, among whom there was quite an assemblage of women, who gazed with intense curiosity, through the openings in the line of the military, upon the stranger visitors from another hemisphere.

On the arrival of the Commodore, his suite of officers formed a double line along the landing place, and as he passed up between, they fell into order behind him. The procession was then formed and took up its march toward the house of reception, the route to which was pointed out by Kayama Yezaiman and his interpreter, who preceded the party. The marines led the way, and the sailors following, the Commodore was duly escorted up the beach. The United States flag and the broad pennant were borne by two athletic seamen, who had been selected from the crews of the squadron on account of their stalwart proportions. Two boys, dressed for the ceremony, preceded the Commodore, bearing in an envelope of scarlet cloth the boxes which contained his credentials and the President's letter. These documents, of folio size, were beautifully written on vellum, and not folded, but bound in blue silk velvet. Each seal, attached by cords of interwoven gold and silk with pendant gold tassels, was encased in a circular box six inches in diameter and three in depth, wrought of pure gold. Each of the documents together with its seal, was placed in a box of rosewood about a foot long, with lock, hinges, and mountings, all of gold. On either side of the Commodore marched a tall, well-formed negro, who, armed to the teeth, acted as his personal guard. These blacks, selected for the occasion, were two of the best looking fellows of their color that the squadron could furnish. All this, of course, was but for effect.

The procession was obliged to make a somewhat circular movement to reach the entrance of the house of reception. This gave a good opportunity for the display of the escort. The building, which was but a short distance from the landing, was soon reached. In front of the entrance were two small brass cannon which were old and apparently of European manufacture; on either side were grouped a rather straggling company of Japanese guards, whose costume was different from that of the other soldiers. Those on the right were dressed in tunics, gathered in at the waist with broad sashes, and in full trowsers of a grey color, the capacious width of which was drawn in at the knees, while their heads were bound with a white cloth in the form of a turban. They were armed with muskets upon which bayonets and flint-locks were observed. The guards on the left were dressed in a rather dingy, brown-colored uniform turned up with yellow, and carried old-fashioned match-locks.

The Commodore having been escorted to the door of the house of reception, entered with his suite. The building showed marks of hasty erection, and the timbers and boards of pine wood were numbered, as if they had been fashioned previously and brought to the spot all ready to be put together. The first portion of the structure entered was a kind of tent, principally constructed of painted canvas, upon which in various places the imperial arms were painted. Its area enclosed a space of nearly forty feet square. Beyond this entrance hall was an inner apartment to which a carpeted path led. The floor of the outer room was generally covered with white cloth, but through its centre passed a slip of red-colored carpet, which showed the direction to the interior chamber. This latter was entirely carpeted with red cloth, and was the state apartment of the building

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where the reception was to take place. Its floor was somewhat raised, like a dais, above the general level, and was handsomely adorned for the occasion. Violet-colored hangings of silk and fine cotton, with the imperial coat of arms embroidered in white, hung from the walls which enclosed the inner room, on three sides, while the front was left open to the antechamber or outer room.

As the Commodore and his suite ascended to the reception room, the two dignitaries who were seated on the left arose and bowed, and the Commodore and suite were conducted to the arm chairs which had been provided for them on the right. The interpreters announced the names and titles of the high Japanese functionaries as *Toda-Idzu-no-kami*, Toda, prince of Idzu, and *Ido-Iwami-no-kami*, Ido, prince of Iwami. They were both men of advanced years, the former apparently about fifty, and the latter some ten or fifteen years older. Prince Toda was the better looking man of the two, and the intellectual expression of his large forehead and amiable look of his regular features contrasted very favorably with the more wrinkled and contracted, and less intelligent face of his associate, the prince of Iwami. They were both very richly dressed, their garments being of heavy silk brocade interwoven with elaborately wrought figures in gold and silver.

From the beginning, the two princes had assumed an air of statuesque formality which they preserved during the whole interview, as they never spoke a word, and rose from their seats only at the entrance and exit of the Commodore, when they made a grave and formal bow. Yezaiman and his interpreters acted as masters of ceremony during the occasion. On entering, they took their positions at the upper end of the room, kneeling down beside a large lacquered box of scarlet color, supported by feet, gilt or of brass.

For some time after the Commodore and his suite had taken their seats there was a pause of some minutes, not a word being uttered on either side. Tatznoske, the principal interpreter, was the first to break silence, which he did by asking Mr. Portman, the Dutch interpreter, whether the letters were ready for delivery, and stating that the prince Toda was prepared to receive them; and that the scarlet box at the upper end of the room was prepared as the receptacle for them. The Commodore, upon this being communicated to him, beckoned to the boys who stood in the lower hall to advance, when they immediately obeyed his summons and came forward, bearing the handsome boxes which contained the President's letter and other documents. The two stalwart negroes followed immediately in rear of the boys, and marching up to the scarlet receptacle, received the boxes from the hands of the bearers, opened them, took out the letters and, displaying the writing and seals, laid them upon the lid of the Japanese box—all in perfect silence. The President's letter, the Commodore's letter of credence, and two communications from the Commodore to the Emperor, are here given. A third letter from him has already been presented on a previous page. All these, however, accompanied the letter from the President and were delivered at the same time with it.[1]

. . . . . .

Accompanying the letters were translations of the same into the Chinese and Dutch languages. After the documents had been laid upon the lid of the imperial box, made as their receptacle, Mr. Portman, Dutch interpreter, by the Commodore's direction, indicated to Tatznoske, the Japanese interpreter, the characters of the various documents, upon which Tatznoske and Keyama Yezaimen, still kneeling, both bowed their heads. The latter, now rising, approached the Prince of Iwami, and prostrating himself on his knees before him, received from his hands a roll of papers, with which he crossed over to the Commodore, and again falling upon his knees, delivered it to him. The Dutch interpreter now asked "what those papers were?" to which it was answered, "they are the imperial receipt."

. . . . . .

After a silence of some few minutes, the Commodore directed his interpreters to inform the Japanese that he would leave, with the squadron, for Lew Chew

[1] Of the three letters of Commodore Perry, those of July 7 and 12 are printed above and that of July 14 below.

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and Canton in two or three days, and to offer to the government his services, if it wished to send any dispatches or messages to those places. The Commodore also stated that it was his intention to return to Japan in the approaching spring, perhaps in April or May. Tatznoske then asked the Dutch interpreter to repeat what he had said about the Commodore's leaving and returning, which he did, using the same words as before. Then the question was asked "whether the Commodore would return with all four vessels?" "All of them," answered the Commodore, "and probably more, as these are only a portion of the squadron." Allusion had been made to the revolution in China, and the interpreter asked its cause, without however translating to the Japanese princes, to which the Commodore dictated the reply, that "it was on account of the government."

Yezaimen and Tatznoske now bowed, and, rising from their knees, drew the fastenings around the scarlet box, and informing the Commodore's interpreter that there was nothing more to be done, passed out of the apartment, bowing to those on either side as they went. The Commodore now rose to take leave, and, as he departed, the two princes, still preserving absolute silence, also arose and stood until the strangers had passed from their presence.

The Commodore and his suite were detained a short time at the entrance of the building waiting for their barge, whereupon Yezaimen and his interpreter returned and asked some of the party what they were waiting for; to which they received the reply, "For the Commodore's boat." Nothing further was said. The whole interview had not occupied more than from twenty to thirty minutes, and had been conducted with the greatest formality, though with the most perfect courtesy in every respect.

The procession re-formed as before, and the Commodore was escorted to his barge, and, embarking, was rowed off toward his ship, followed by the other American and the two Japanese boats which contained the governor of Uraga and his attendants, the bands meanwhile playing our national airs with great spirit as the boats pulled off to the ships. While there was some little delay in embarking all the party, in consequence of the smallness of the landing place, which was now flanked by some sixty or seventy Japanese government boats, the soldiers took occasion to crowd in from various parts of the shore, either to satisfy their curiosity, or to show a more formidable front; and it must be confessed that, had such been the disposition of the Japanese, there would have been no difficulty, with their large force, in completely hemming in the Americans.

The "series of notes" of Commodore Perry continues as follows for July 15 and 16:

The following morning the 15th the surveying boats were early at work sounding still further up the Bay, and in the afternoon, I ascended in the Mississippi ten miles higher taking the ship within seven miles of Yedo, and twenty miles higher than the usual anchorage at Uraga, we could distinctly see the Port or shipping place of Yedo filled with innumerable junks, but the city containing like those of China nothing but low buildings was hidden behind a projecting point.

I might have gone still higher but was apprehensive of causing too much alarm, and thus throwing some obstacle in the way of a favourable reception at Court of the President's letter, which I had delivered only the day before, and which was probably then under consideration, and thinking that I had done enough to work upon the fears of the Emperor without going too far in my experiment I caused the ship to rejoin the Squadron at the "American anchorage"

In my absence the Governor of Uraga came along side the Susquehanna apparently very much annoyed at the motions of the Mississippi, and said probably as an excuse for coming so far from his city that the letter of the President had been received at Court, and would doubtless have a favourable consideration, and he begged the acceptance of a few presents. As I had previously given orders that no one should be admitted on board the ship without my especial permission neither he nor the presents were received and he went on shore with the expressed intention of returning the following morning.

During the day all the boats that could be spared from the ships twelve in number were busily engaged in surveying the western shore of the Bay above Uraga.

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The next day being Saturday the 16th the ships were at daylight moved to a Bay about five miles above Uraga which I have called "Susquehanna Bay", in the survey of which the boats were now employed. The Governor was alongside before we had anchored, and with a renewal of his prediction of the favourable reception of the President's letter nothing was said now of sending the answer to Nangasaki, and it seemed the nearer we approached the Imperial City the more polite and friendly they became.

He was told by my orders that the presents which he brought alongside could not be received if others from me were not accepted in return; to this he at first demurred by interposing the invariable plea that the Japanese law forbade it upon which he was answered that our laws enjoined a reciprocity of courtesy, and his presents would not be received finding me resolute upon this as upon all other points of ceremony he consented to receive in return whatever (excepting arms) I might be disposed to present, consequently some few articles of more value than those he brought were sent on deck, and when he saw them, he declared they were of too much value, and he dared not take on shore anything but what his Interpreter and himself could conceal about their persons, when he was informed that if he could not receive the articles openly and without concealment, I would send those which he had brought on board back into his boat; upon this he left the ship carrying with him all my gifts, excepting three swords which he was permitted to leave.

In the afternoon he came on board with a trifling present of poultry and eggs, and determining to be under no obligation to these people, I sent in return presents of greater value to the wives of the Governor and his interpreters

Here was another point gained in the unprecedented circumstance of their consenting to exchange presents.

These three paragraphs regarding the occurrences of July 16 are from the journal of Williams, 67–68:

Almost before we had anchored Yezaimon came pulling alongside bringing the presents; the interpreters came in two boats and showed us a memorandum in Dutch to the effect that the letter of the President sent through the Dutch at Nagasaki had been received,[1] and that probably our present letter would be favorably regarded by the council, but that it rather worked against us (by what manner was not intimated) to be cruising about the bay and examining it as we did. This paper received no notice, being merely a memorandum such as we had given them, and yet its contents were evidently directly pointed to attain our departure as soon as possible by holding out the hope of attaining our end. It is not unlikely, therefore, if we could remain in the bay a month, showing the ships here and there, that the great ends of the mission might be obtained now in order to avoid a second visit.

Yezaimon and his suite took breakfast with Captains Buchanan and Adams and behaved themselves very properly. The presents in return for theirs were ready about nine o'clock, consisting of 1 box of tea, 3 engravings of steamers and a house, 3 History of U.S., 20 ps. of coarse cotton, bale of drillings, a loaf of sugar, box of champagne and demijohn of whiskey, they declining to receive the 3 swords. Theirs were 5 pieces of brocade, 40 bamboo fans, 50 tobacco pipes and 50 lacquered cups, which were described as merely tokens of remembrance, and they wished us to receive them as personal favors. Considerable discussion ensued on this point; they wished to leave theirs on board and ask permission to take ours in the afternoon, or to send ashore to ask their superiors, but no alternative could be allowed; they must either take ours, or carry their own back again, and we had begun to put them up to be replaced in their boat when they agreed to the least serious alternative for them and went off with the Commodore's presents and list, taking a few other mementos from us who had had most of the conferences with them, such as coins, soap, pictures, etc. I have no doubt they kept the whole themselves, concealing the transaction (as an exchange on equal terms) from their superiors.

During the day a survey of this part of the bay was completed, the two sloops came down to the spot, and when in the afternoon Yezaimon came off to bring a

[1] This is obscure; no letter of the President was sent by way of Nagasaki.

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parting douceur of fowls and eggs we were able to reassure him that the squadron would sail in the morning as we had promised him when at breakfast. His assortment of fowls was rather a pretty collection of bantam and other kinds, and he made no objection to receiving a box of seeds, two cakes, bottle of cologne, cherry cordial, maraschino and some cakes of soap, besides a good potation of punch and champagne under his girdle. He was in very good humor with everybody and left us, with all his retinue, about five o'clock, having visited the ship every day since he first came off a week ago this morning. In all his conduct he has shown great propriety, apparently never getting out of humor, and exhibiting no hauteur or acerbity toward his inferiors; listening to whatever was told him with courtesy, whatever its purport.

The "series of notes" of Commodore Perry concludes with the following report, including a summary of the advantages gained from the first visit to Japan:

Having completed the survey of the West side of this magnificent Bay of Uraga to a point about 14 miles below Yedo, and sounded with the Mississippi and boats six miles nearer to that City, and acquiring a sufficient knowledge of the Bay to conduct the Vermont [1] to the American anchorage, and higher if necessary, I thought it advisable to return to Lew Chew intending to despatch the Saratoga after we cleared the coast of Japan to Shanghai, and employ the other vessels on the way in the further examination of the Island Oho-sima,[2] but unfortunately before reaching that Island we encountered a severe gale which in part defeated the object.

It has already been observed that in adherence to my previous determination I had no personal communication with the Governor of Uraga the officer employed by the Japanese Government to visit the ship and conduct the preliminary arrangements for my reception; the only persons with whom I had an interview were the Princes of Idzu and Iwami, consequently the conferences with the Governor were conducted on my part by Commanders Buchanan and Adams and Lieutenant Contee assisted by the Chinese interpreter Mr S Wells Williams and by the dutch interpreter Mr Portman although these officers acted under my immediate instructions and were in constant communication with me, much credit is due to them for managing the discuss ion with great judgement and skill.

I take pleasure also in commending the coolness and industry with which the surveying officers under Lieut[t] Silas Bent conducted their laborious duties.

It is proper that I should add in conclusion that the Governor in the several conferences on board ship evinced great anxiety to learn how long I intended to remain upon the coast remarking repeatedly that it was the custom of the Japanese Government to be very slow in deciding upon matters having reference to foreign countries; upon these representations and knowing that the propositions contained in the President's letter were of such importance as to require time for deliberation, overturning as they would if acceded to many of the fundamental laws of the Empire I deemed it advisable not to wait for a reply and for the following reasons.

I had not provisions or water sufficient to allow of my remaining on the coast more than a month longer I well knew that they could easily and very reasonably defer for a long time any satisfactory reply for the reason of the alleged necessity of calling together and consulting the Princes of the Empire, as also to consult the Dairi [3] or Ecclesiastical Emperor; thus I should be put off from day to day,

[1] The *Vermont* did not join the squadron of Commodore Perry, as had been intended.

[2] Oshima or Amami O Shima, the largest of the northern group of the Loochoo Islands (see Narrative, I, 229–30, 272, 324–25).

[3] Dr. Sakanishi writes: "*Dairi* is an old Japanese word designating the quarters of the Emperor as contrasted with the whole Imperial Palace grounds, known as the Greater Imperial Palace or *Daidairi*. During the Tokugawa period we find the word *Dairi* used in two ways. In speaking of the two capitals, Yedo and Kyoto, the latter is called *Dairi*, seat of the Emperor. Then, in speaking of the Emperor, he is called *Dairi*."

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and ultimately be obliged to sail without any satisfaction whatever; this would be construed into a triumph by them, and cause a serious injury to the success of my mission.

Taking into view also the present disturbed state of China, and the need of one or more ships of the Squadron in that quarter, and considering that not a single vessel, which had been promised by the Department should immediately follow me, had yet joined my force, and being without the Presents sent from the United States, and those expected in the Vermont, I was glad to have a good excuse for consenting to wait until the ensuing spring for the final answer of the Japanese Government.

In the spring I shall have concentrated my whole force, and be prepared with store and coal vessels and all other conveniences, for remaining if it be necessary, an indefinite time, to secure such concessions, as I believe they will be constrained to make.

The exhibition of so large a force, and a continuation of the policy so far successfully pursued, and having given them full time for the consideration of the propositions of the President, I shall be prepared to act very decidedly, and I trust with continued success, provided there shall be no curtailment of the force promised me by the Government, before my departure from home.

Under these considerations, I determined to make a credit of necessity, and accordingly prepared a letter, to be delivered with other documents on the occasion of my reception on shore, but which of course would have been withheld, if an unfriendly course had been adopted by the Japanese Government. The following is a copy of the letter just referred to, and which accompanied the other papers.

US Steam Frigate Susquehanna,
"*Uraga, Yedo Bay July 14th 1853.*

"It having been represented to the undersigned that the propositions sub-
"mitted through him to the Government of Japan are of so much importance,
"and involve so many momentous questions, that much time will be required
"to deliberate and decide upon their several bearings:"

"The undersigned, in consideration thereof, declares himself willing to
"await a reply to these propositions until his return to Yedo Bay in the en-
"suing spring, when he may confidently hope, that all matters will be ami-
"cably arranged, and to the satisfaction of the two nations.

With profound respect,

(Signed) M C Perry

Commander in Chief US Naval Forces, East India, China, and Japan seas.

To His Imperial Majesty,
the Emperor of Japan.

It will be perceived by a perusal of the foregoing notes, that in the eight days the Squadron remained in Yedo Bay, I was successful in gaining several important advantages, hitherto denied to all other nations, excepting in a very limited degree to the Dutch and Chinese, and awarded even to them, at the expense on their part of the most degrading concessions.

First. Guard boats, which have up to this time, surrounded foreign ships by hundreds, were immediately dispersed by my orders.

Second. Extensive surveys were made of waters hitherto unknown to foreigners within a few miles of Yedo, and under the guns of numerous batteries.

Third The accomplishment of my predetermined intention to confer with no one, but a dignitary of the highest rank in the Empire, and of being received in a manner honorable to my Government, and myself, and without the slightest deviation on my part from those simple rules of diplomatic courtesy, recognized by our institutions.

Whilst the Governor of Uraga prostrated himself on every occasion of addressing the Prince of Idzu, myself and staff were quietly seated opposite the Princes Idzu and Iwami and their secretary, with no more ceremony than was due to a similar conference with any other commissioner duly accredited.

Fourth. I required in the receipt and delivery of presents, conformably to invariable Eastern Custom, the United States should be on a footing of equality,

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thus destroying the presumed claim hitherto held forth by China and Japan, that all presents to the respective Emperors have been tendered as tributes to superior Powers.

And Lastly. I have endeavoured to inculcate the idea, that as the Government of the United States is superior in power and influence to Japan, so its overtures have been dictated alone by a desire to be on terms of amity with all nations, to give protection to our seamen, and other citizens, and especially to cultivate a friendly intercourse with an Empire, whose geographical position has been brought by the power of steam commercially near to our Pacific Ports.

Respectfully submitted

M C. PERRY

Commander in Chief US Naval Forces East India, China and Japan seas

US STEAM FRIGATE SUSQUEHANNA,

Napa Keang, Lew Chew July 30th, 1853.

These paragraphs are from Perry's unnumbered confidential despatch of August 3, 1853, which is not printed in serial 751:

As there is much that should be communicated to the Department which ought not to be embodied in a public despatch, for reason of the practice of submitting such documents for publication upon call of Congress, I have thought it advisable to pursue a course hitherto adopted by me on similar occasions, to mark such letters *confidential* as may contain observations however just and proper that still might possibly give offence, leaving to the Department to decide as to their disposition having myself no desire of concealment.

The Department will appreciate my motives when it perceives, that I speak in this communication of the relations of the Dutch Government or rather the Dutch East India Company with Japan, and in explanation of the reasons which induced me to avoid Nangasacki and to proceed at once to Yedo.

There can be little doubt that the Japanese and Dutch expected the squadron to arrive at Nangasacki, and were prepared to receive us with apparent cordiality, but with a fixed design to throw obstacles and delays in the way of any favourable issue to my visit, as nothing of importance can be done in Japan without reference to the Emperor and his Counselors, the letter of the President would not have been received by the Governor of Nangasacki without authority from Court, nor would I have delivered it to any other than a person duly authorized to receive so important a document.

The sending to Yedo and receiving a reply would occupy an interval of two months, and no one could say when a reply to the letter would be returned, meanwhile, the provisions of the Ships would have been exhausted and my departure made necessary.

Besides I should have had no confidence in the Dutch—their servile submission to the capricious tyranny of the Japanese would have prevented any other intercourse with myself and officers than that which their watchful and suspicious jailers would permit, hence their interference even if sincere would have had an injurious rather than a beneficial tendency.

The Japanese can certainly entertain very little respect for a people, who will so deeply degrade themselves for the advantage of a trade permitted under the most revolting circumstances.

If I had gone to Nangasacki it would have been necessary in consideration of the profferred intervention of the Dutch Government, to have consulted the residents of Decima and to have admitted them into my councils, this once done I could not have escaped from their influence, and it is not to be supposed that they would have very strongly urged the free and independent demands of the United States, when they themselves were living in abject submission to the Japanese.

At Yedo the Government could have no excuse for unreasonable delay, and I should be free from the very doubtful friendship of the Dutch. The result has proved the judiciousness of avoiding their agency.

From the moment I was ordered upon this mission, I have availed myself of every means of obtaining information with respect to the Government and people

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of this singular Empire, and my short intercourse with them has in most part confirmed the accounts obtained from books.

The entire population is composed of four classes. The Royal Families (there are two, one Spiritual, the other Temporal) and the Nobles—next, the literati and priesthood, most of the high officers being selected from the literati—next, the merchants, traders, spies and soldiery—and last, the working class, made up of the mechanics, field labourers, sailors and fishermen, the latter class, supporting by their patient and never ending toil, all the others.

We had very little opportunity of judging of the resources of the Country, though one might suppose them to be very great. Its coasting trade is extensive, about one hundred Junks passing up and down the Bay daily.

The effect in Japan of the first visit of Commodore Perry is very interestingly discussed in Nitobé, Intercourse between the United States and Japan, 48–51, and in Brinkley, History of the Japanese People, 664–66. For the reference to the Emperor at Kyoto of the matter of the policy to be followed and the advice given by the nobles, see Gubbins, *op. cit.*, 90–100.

Further Instructions

The incoming of the administration of President Franklin Pierce (March 4, 1853), in which William L. Marcy was Secretary of State and James C. Dobbin Secretary of the Navy, preceded by some months Perry's first visit to Japan. On October 18, 1853, Robert M. McLane, of Maryland, was appointed Commissioner to China; under date of October 28 Perry was directed to send one of his steamers to Macau to meet McLane there and to be subject to his control; but Perry found it inadvisable to comply at once with this order when it reached him at Hong Kong some eleven weeks later (see, in Narrative, I, 305–7, the instruction of the Secretary of the Navy to Perry, October 28, 1853, and the answering despatch of Perry of January 14, 1854, there misdated 1855).

It was contemplated that McLane might renew the efforts for a commercial arrangement with Japan if the mission of Commodore Perry failed; but McLane was informed that he was not to be associated with the mission of Perry "unless he shall desire your cooperation therein, and you shall be able to render it without prejudice to the other objects of your mission" (D.S., 1 Instructions, China, 90–95, November 9, 1853).

McLane had no part whatever in the negotiations; he did not reach Hong Kong until March 13, 1854 (D.S., 9 Despatches, China, No. 1, March 20, 1854), a month after Perry had arrived in Yedo Bay for his second visit to Japan. It was doubtless expected at Washington that Perry's return to Yedo Bay would be, as he had written, in "the ensuing spring"; but Perry had altered his plans because of "suspicion of the movements of the French and Russians" [1] and had

[1] Cooperation with the Russian Vice Admiral, Count Euthymius Putiatin, was declined by Perry (see his despatch No. 30, of December 24, 1853, from Hong Kong, and enclosure A thereto, in serial 751 pp. 80–82). The fourth paragraph of the cited despatch, reading as follows, is omitted from the print:

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sailed from Hong Kong in the *Susquehanna* for the Loochoo Islands on January 14, 1854 (Narrative, I, 303).

Instructions of November 14, 1853, from President Pierce were sent to Perry; McLane was the bearer of the original thereof, which was not received by Perry until after the completion of his second visit to Japan;[1] a duplicate of the instructions was sent forward from Washington on November 19, 1853 (see serial 751, pp. 57–59, 68); eight weeks later Perry left Hong Kong for his second visit to Japan; fifty-six days was not then time enough for mail to reach Hong Kong from Washington (see *ibid.*, 105–6). Just when Perry received the duplicate does not appear; but the earliest date possible was March 19, 1854,[2] only twelve days before the signing of the treaty; so the instructions, which follow, are chiefly of interest as showing the views of the Pierce administration at the time (Miscellaneous Letters, November–December 1853, Dobbin to Marcy, November 14, 1853, enclosure of the same date):

U.S. NAVY DEPARTMENT
Washington November 14, 1853

Comm^{o} M. C. PERRY
Comm^{g} U.S. Squadron East India & China Seas

SIR, Your several despatches, bearing date August 3, 1853, have been received.[3] I have perused them with much interest and avail myself of this occasion to assure you of my gratification that your long and perilous voyage to Japan and return to China have been accomplished successfully, and that in the experiment of attempting to secure intercourse with that singular people, you were so well sustained by the prompt and efficient coöperation of the officers and men under your command.

These communications have all been submitted to the President, who, while he would be happy to see your interesting mission crowned with success and would aid you as far as he can legitimately, desires to impress you with his conviction that the great end should be attained, not only with credit to the United States, but without wrong to Japan. I need not remind you that your mission is one of peaceful negotiation and that, although in consideration of the peculiar char-

The Admiral has been in pursuit of me for several months, first going to the Bonin Islands, and not suspecting, that I would have gone directly to Yedo, he proceeded to Nagasaki, and thence to Shanghai, where he now is in want of coals, to enable him to return to Japan. I shall endeavour to avoid supplying him, upon the ground of requiring all we have for the use of our own steamers, (which indeed is the fact) as in the event of his joining me at Yedo my plans would be greatly embarrassed.

[1] McLane sent the "instructions, from the Secretary of the Navy, under the seal of the Navy Department" with a letter to Perry of April 19, 1854, from the *Susquehanna*, at Hong Kong (D.S., 9 Despatches, China, No. 17, November 18, 1854, enclosure).

[2] During Perry's second visit to Japan he once received news from the United States, including messages of as late a date as December 12, 1853 (despatch No. 42, of March 20, 1854, printed below); that news reached him by the storeship *Supply*, which arrived in Yedo Bay from Shanghai on March 19, 1854, having sailed thence on March 1 (National Archives, Log Book, U.S.S. *Supply*).

Receipt of instructions of November 14 and 19, 1853, and of others of earlier and later dates, was acknowledged in unprinted despatch No. 58, of August 3, 1854, from Macau.

[3] Among these was an unnumbered confidential despatch which is not printed in serial 751. The paragraphs of that despatch which precede the portion thereof quoted in this instruction appear above; for the remainder, relating to Loochoo, see the editorial notes to Document 166.

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acter of the Japanese much importance may well be attached to the exhibition of impressive evidences of the greatness and power of our country, no violence should be resorted to, except for defence. It is very desirable to make our Navy an efficient branch of the Government, both in extending and protecting commerce and trade—but as Congress alone has power to declare war, too much prudence cannot be exercised even in the great work in which you are engaged.

These suggestions are not made to discourage your laudable zeal, nor to detract from the magnitude of your mission. Every confidence is reposed in your judgment and patriotism. They have, however, been called forth by a portion of your interesting notes, in which you express some hope of success in the Spring by operating on the fears of the Japanese, but speak at the same time of the number of the batteries already erected on the shore to "expel the Americans" and of the probability of more being constructed before Spring; thereby intimating the opinion that they are preparing to give you a warlike reception. The following are the portions of your despatches [1] to which I refer.

> "The land is highly cultivated and the shores are lined with flourishing towns and villages intermingled with *batteries* and the waters are every where covered with large and commodious boats.
>
> "Many of the batteries are new and seem to have been planned with some regard to the rules of engineering—others are in progress of construction, designed probably to expel the Americans from their coasts,—doubtless, many others will be erected before the ensuing Spring for the same object, but with the force I shall have, and especially with the aid of the Vermont, I shall not be deterred from penetrating to the very head of navigation in the Bay and within three or four miles of Yedo, perhaps within gunshot.
>
> "It is very certain that the Japanese can be brought to reason only through the influence of their fears, and when they find that their sea coast is entirely at the mercy of a strong naval force, they will be induced, I confidently hope, to concede all that will be asked of them and I feel assured that, even if they cannot be brought to any treaty arrangement, strangers who may hereafter be thrown upon their shores will be treated with kindness."

If the Department desired to add the Vermont to your force, as was contemplated by my predecessor, it can not be done on account of the impossibility of procuring seamen. Vessels already manned cannot be spared, as their services are otherwise more urgently needed.

When the Saratoga leaves you, and after supplying the Hon Mr McLane, Commissioner to China, with the steamer directed by this Department on the 28th ult^{o}, you will have still two steamers, and on the arrival of the Macedonian, three sloops of war besides the store ships. The President entertains the opinion that this force will be amply sufficient for all purposes of defence and will be an exhibition of power calculated to impress the Japanese favorably and effect the object of your mission, so far as naval force can effect it, unless landing large bodies of men and invasion be contemplated, which Congress, in its wisdom, I presume will not be disposed to sanction in a country so remote, without great provocation. Mr McLane goes to China with every disposition to coöperate with you and will no doubt aid you as far as possible.

Your presence and personal observation of the state of affairs, of course, enabled you to judge more correctly of what was expedient, than those who are remote from the scene—but in consideration of the vast expense and the great need of some of your squadron for other important purposes, it is much to be regretted that final action should have been postponed to so late a period as next Spring.

The President desires that as you have advanced thus far, and have given notice of your intention to return in the ensuing Spring, you will accordingly proceed to Japan and resort to every honorable and reasonable effort to persuade the Japanese to abandon their inhospitable and unsocial system and to effect a treaty of amity and commerce.

[1] See the preceding footnote.

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You will, upon your return to China, give our Commissioner, as well as this Department, information of the results of your efforts and coöperate with him in the execution of his mission to China.

You think that in the saving of coal, it will be economy to hire a small steamer on your next visit to the Bay of Yedo. If this is your judgment, the Department approves of such a course, and takes this occasion to suggest, that, in consideration of the great expense attending the delivery of coal in the East Indies, it is very important that steam should only be used when in your judgment it is indispensably necessary.

A copy of the instructions[1] from the State Department to Mr McLane is herewith enclosed. Mr McLane has been furnished with a copy of this despatch to yourself.

Wishing you every success in your enterprise, I am respectfully your obed^{t} sv^{t}

J. C. DOBBIN
Secretary of the Navy

THE PLANS OF COMMODORE PERRY

As has been mentioned, Perry sailed from Hong Kong on January 14, 1854, for Loochoo. This, his fourth visit to those islands, lasted from January 21 to February 7. From Naha Perry wrote this important despatch to the Secretary of the Navy, setting forth the plans which, upon the failure or partial failure of his mission to Japan, he had determined to prosecute (serial 751, 108–11):

N° 39. U.S. FLAG SHIP SUSQUEHANNA
Napa Keang, Great Lew Chew January 25th 1854.

SIR, I have the honor to transmit herewith a copy with a translation appended, of a communication received on the 14th inst: from the Governor General of the Dutch East Indias, and also a copy of my reply thereto.[2]

I had previously heard through Officers of the Russian Squadron, of the reported death of the Emperor of Japan,[3] and that similar reasons had been assigned to the Russian Admiral for a non-reply to a letter from his Sovereign, which he had sent to Yedo from Nangasaki.

It would seem to be singular that the Emperor of Japan, who as we understood was in good health at the time of our visit to Yedo Bay in July last, should have died immediately after the appearance of the American and Russian Squadrons upon the Coast, and it is also singular that the law of protracted mourning and consequent delay of public business referred to, should not have been mentioned in any of the books describing the manners and customs of the Empire.

The laws of China require the eldest son of the highest Classes to abstain from pleasure, company, or business for seven weeks, but the successor to the Imperial Throne assumes the Government immediately, and public business is never interrupted.

The intelligence will not however deter me from prosecuting the plans which I had previously proposed to myself, and as this letter together with others will be sent by the Store Ship Supply to Shanghai, there to take the mail for the United States, probably offering the last opportunity I shall have for a length of time of communicating with the Department, it is proper that I should avail of the occasion to make the Government acquainted with the nature of those plans, of the successful issue of which however, there is of course much uncertainty.

[1] Of November 9, 1853, cited above.

[2] Of January 23, 1854; for the correspondence, see Narrative, I, 322.

[3] The reference is to the twelfth Tokugawa Shogun, Iyeyoshi, who died July 26, 1853, nine days after the first visit of Commodore Perry (see Brinkley, *op. cit.*, 668; and for a list of Shogun, see Clement, *op. cit.*, 255–56).

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It is known that one of the leading objects of my mission, was to demand explanations of the Japanese Government, respecting its treatment of American Citizens, who have been accidentally thrown upon its shores, and to make declaration that the U.S. Government will no longer tolerate such acts.

To endeavour to obtain the opening of one or more Japanese Ports to American vessels.

And to negotiate if possible a treaty with the Empire, upon a basis just and equitable.

There will I imagine be little difficulty in bringing about suitable explanations and apologies, with assurances of kind treatment to all strangers who may hereafter fall into the hands of the Japanese, as also friendly treatment and supplies to Whaling Ships anchoring in the Ports of the Empire, and this result would alone repay the U.S. Government for all the expenses of the expedition.

With respect to the accomplishment of the two other objects in view, there is in my mind some doubt, unless force is resorted to, and the adoption of this alternative if not brought about by the acts of the Japanese themselves, would probably put us in the wrong.

It will therefore become necessary in the absence of specific instructions, for me to assume certain responsibilities, and to act according to circumstances and as my best judgment may dictate.

To this end, it is my intention should the Japanese Government refuse to negotiate or to assign a Port of resort for our Merchant and Whaling Ships, to take under the *surveillance* of the American Flag upon the *ground of reclamation for insults and injuries committed upon American Citizens*, this Island of Great Lew Chew, a dependency of the Empire, to be held under such *restraint*, until the decision of my Government shall be known, whether to avow or disavow my acts. Until such action is had the responsibility will rest solely upon me, and I shall assume it as a measure of political precaution, for it is certain that if I do not take preliminary steps before leaving this Port for Yedo, for adopting such course, the Russian, or French, or probably the English will anticipate the design.

It will be understood, that in no way will the authorities or people of the Island be molested or interfered with, nor will any force be used unless in self defence, in truth we already possess all necessary influence in the Island, which has been acquired by kindness and non-interference with their laws and customs.

The Americans have stronger claims for redress upon the Japanese than any other Civilized Nation, and though it does not belong to the spirit of our institutions to extend our dominion beyond sea, positive necessity requires that we should protect our commercial interests in this remote part of the world, and in doing so to resort to measures however strong, to counteract the schemes of powers less scrupulous than ourselves.

Therefore in my present position I cannot but feel the weight of responsibility which this peculiar state of things imposes upon me, and being aware of the expectation of the Government and people of the U. States with respect to Japan, I shall not flinch from the exercise of powers, the propriety of which may be *at first*, questioned by many, but the avoidance of which would be pronounced by *all*, as showing a want of sagacity and firmness on my part.

The friendly intercourse of the Americans with the inhabitants of the Island, has already contributed greatly to their advantage, and no one can foretell, the benefits that would arise to these debased and inoffensive people by a certainty of protection from a powerful Nation like ours.

The most scrupulous regard to the rights of the authorities and other classes has been observed, and they are gradually becoming less reserved, and if it were not for the numerous Japanese Agents and spies, who are ever on the watch, to notice and report to the Imperial Government every event that transpires, *marking* those who manifest any friendly regard for us, *to be held accountable at some future time*, the Lew Chewans it is thought, would rejoice in being placed in a political position rendering them independent of the tyranny of their Japanese rulers.

The Regent at my request ordered some time since, the erection of a building as a depository for coal, in which there is now about 700 Tons, for the use of the squadron, he has also assigned a building for the accommodation of the sick and others who reside on Shore.

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For these, I insist on making payment, to which in consideration of the presents made to him of Cattle &c he has demurred, but I shall persist as I did with reference to the supplies for the Ships, for which they do not now evince the least reluctance to be paid, even advancing their prices.

In regard to the Bonin Islands every thing according to the last accounts, remains as at the time of our departure from Port Lloyd.

And I now beg to invite the particular attention of the Department to the tenor and meaning of the foregoing observations, and to remark that in all probability, I may not have arrived at any final understanding with the Japanese, whether satisfactory or otherwise, so as to enable me to return to Hong Kong before the latter end of July next, by which time a reply to this communication may be expected in due course of mail.

And as I would earnestly request the Department to instruct me whether I shall take further measures for holding possession of this Island, provided the Japanese Government may not comply with our just demands, or whether I am to abandon all claims upon it, and leave the authorities and people as I found them, an alternative I might hope would not be determined on, as well in justice to this defenceless and overburthened people as a regard to the commercial interests of our Country.

I would also ask for instructions with respect to the Bonin Islands, my former communications, and my correspondence [1] with Sir George Bonham now before the Department, will fully explain the motives which have actuated me in visiting and exploring this interesting group.

I have the honor to be, Very Respectfully Your Most Obt Servant,

M, C, PERRY

Commander in Chief U.S. Naval Forces East India, China and Japan Seas.

The Honorable

JAMES C. DOBBIN

Secretary of the Navy Washington.

The response to the foregoing despatch was not written at Washington until more than four months later and could not have been received by Perry earlier than August 1854, when he was in Hong Kong and about to return to the United States (see Narrative, I, 508, and serial 751, p. 116); that instruction of May 30, 1854, which follows, shows that the course which Perry, in certain contingencies, proposed to follow regarding "Great Lew Chew" would not have been approved by the Pierce administration (*ibid.*, 112–13):

NAVY DEPARTMENT *May 30th 1854.*

Sir, Your despatch No. 39. dated at Napa Keang, Great Lew Chew January 25th 1854. has been received.

Your suggestions [2] as to the policy and propriety of securing a Coal Depot at Port Lloyd are appreciated and approved by the Department. At some future and no distant day I have no doubt from its geographical position it will be found convenient and important for a line of steamers to Shanghae or Hong Kong from the Sandwich Islands or from San Francisco to China.

Your correspondence with Sir George Bonham in regard to the Bonin Islands was conducted with ability and in the right spirit.

Your suggestion about holding one of the Lew Chew islands "upon the ground of reclamation for insults and injuries committed upon American Citizens" "should the Japanese Government refuse to negotiate or to assign a Port of resort for our merchant and Whaling Ships" is more embarrassing. The subject has been laid before the President who, while he appreciates highly the patriotic motive which prompts the suggestion, is disinclined, without the authority of Congress, to take and retain possession of an Island in that distant Country, particularly, unless more urgent and potent reasons demanded it than now exist. If, in

[1] For this correspondence, see Narrative, I, 303–6.

[2] The reference here is particularly to Perry's despatch No. 15, of June 25, 1853 (see serial 751, pp. 29–39).

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future, resistance should be offered and threatened, it would also be rather mortifying to surrender the Island if once seized, and rather inconvenient and expensive to maintain a force there to retain it. Indulging in the hope that the Contingency may not arise to occasion any resort to the expedient suggested, and that your skill, prudence and good judgment may enable you to triumph over the ignorant obstinacy of the Japanese without violence, it is considered sounder policy not to seize the Island as suggested in your despatch.

I regret much that the order allowing our Commissioner to China the use of a Steamer should have caused you embarrassment or mortification. Such was far from the design of the Department. The revolution in China seems to call for great consideration from our Commissioner and to render it important that he should have every convenient facility to advance his efforts to effect favorable negotiations for his Country. And although your force is not as large as you anticipated and desired, it is larger than you had on your first visit.

Wishing you all success and fame, I am very respectfully Your Obedient Servant

J. C. DOBBIN

Commodore M. C. PERRY
Commander in Chief U.S. Naval Forces East Indies Hong Kong China

SECOND VISIT TO JAPAN

On February 13, 1854, Commodore Perry in the *Susquehanna*, his flagship, anchored in Yedo Bay for his second visit to Japan. With him were his two other steamers, the *Powhatan* [1] and the *Mississippi*. Four vessels of the squadron, the *Macedonian*, the *Vandalia*, the *Lexington*, and the *Southampton*, had arrived at Yedo Bay before Perry. At the time Perry had ten vessels in his command: [2] the three steamers mentioned, the corvette *Macedonian*, the sloops of war *Vandalia*, *Saratoga*, and *Plymouth*, and the storeships *Lexington*, *Southampton*, and *Supply*. The *Plymouth* remained at Shanghai during this cruise. The *Saratoga* did not reach Yedo Bay until March 4 (from Loochoo), and the *Supply* not until March 19 (from Shanghai). The *Susquehanna* was despatched on March 24 to Macau for the use of Commissioner McLane.

The progress and conclusion of the treaty negotiations were reported[3] by Perry in two despatches to the Secretary of the Navy, Nos. 42

[1] The flag of Commodore Perry was transferred to the *Powhatan* on February 18.

[2] There were also occasional colliers, and at this time a chartered British steamer, the *Queen*, of 150 tons, for service in Chinese waters (see serial 751, pp. 77, 100).

[3] Regarding the report of the Japanese negotiators to their Government, see Gubbins, *op. cit.*, 58–59.

Some rather brief notes of the negotiations, from a Japanese official manuscript cited as "Record of Conference with the American Barbarians", are in Griffis, *op. cit.*, 356–70, *passim* (see also *ibid.*, 428). In this connection it is to be mentioned that in the Division of Manuscripts, Library of Congress, is a volume titled on the binding "M. C. Perry's Treaty", which comprises ninety-five pages of Japanese and which has on its first (last) page the following, written in ink:

ITHACA N.Y. *Nov. 3 1916*

This copy of the colloquies at the treaty negotiations of the Japanese officers of the Shogun's government with Commodore M. C. Perry, was made from the original records in the Foreign Office in Tokio, in 1885, at the request of Rev. Guido F. Verbeck, and is hereby presented to the Library of Congress in Washington, by Wm Elliot Griffis. Biographer of "Matthew Calbraith Perry: A Typical American Naval Officer" and "Verbeck of Japan: A Citizen of No Country".

No translation of that volume is known.

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and 43, respectively of March 20–23 and April 1, 1854, as follows (serial 751, pp. 116–18, 145–46):

N° 42 U.S. FLAG SHIP POWHATAN,
Off the Town of Yoku-hama, Yedo Bay, March 20th 1854.

SIR, My last despatch N° 40.[1] dated the 25th January was forwarded from Lew-Chew since then the whole squadron with the exception of the Plymouth stationed at Shanghae, has been concentrated at this anchorage, at the head of Yedo Bay, and within a few miles of the Capital.

From the moment of my reaching a second time these waters, I have been incessantly engaged in adopting all friendly means of bringing about a satisfactory understanding with the Japanese Government, and so far have succeeded even beyond my expectations.

The most cordial relations subsist between myself and the Commissioners appointed by the Emperor to confer with me, and I entertain a very strong hope, that the mission to Japan may terminate as favorably as could have been expected by those acquainted with the difficulties to be encountered.

To judge from what has already passed I might speak more confidently, but such is the character of the people with whom I have to contend, that the slightest untoward occurrence may bring about issues calculated to mar or destroy our present friendly intercourse, hence the necessity of exercising great caution, and whilst holding the ships prepared at all times for whatever service may be required of them, to endeavour by every honorable advance to conciliate the confidence of the High Officers of the Empire.

Those of the Second and lower classes with whom we have come in contact seeming to desire a closer intercourse.

The Department by a perusal of the accompanying notes, and the papers appended thereto, will be made acquainted with our progress thus far in the accomplishment of the objects of this mission. As the written details are too voluminous to be embraced in an ordinary despatch, I have at this time as on former similar occasions, prepared an account of the most important transactions, in the form herewith presented.

The Susquehanna would have left today for Hong Kong in obedience to the instructions of the Department of the 28th of October, did I not consider it of the highest importance that she should not depart until after my next interview with the Commissioners, appointed for the 23rd inst. when I am promised a definite answer with respect to Matsmai. She will however arrive in good time to meet Mr M°Lane as we have information that his departure from the United States has been delayed beyond the 12th of December, our latest dates from home.

The Vandalia and Southampton sailed this morning for Simodi to meet a Japanese Officer of rank despatched by land, for the purpose of examining that Port, in view of ascertaining its fitness for a stopping place for American Vessels.

I shall of course visit the Port myself, but at present cannot defer my negotiations with the Commissioners.

THURSDAY MARCH 23rd

By reference to the accompanying notes it will be seen that the proposed meeting of the Commissioners did not take place owing to a mistake in their reference to dates, but they sent their reply to my demand for the opening of a Northern Port.

I have as will be seen conditionally agreed to this proposition, and will communicate the final result of my negotiations by the Saratoga now waiting here to carry Commander Adams as bearer of such treaty as I shall be able to conclude. That officer to take the Panama route, when the Ship will pursue her passage to Boston.

It may be well to remark here, that although the report of the death of the Temporal Emperor has been confirmed, the event has not apparently retarded or embarrassed in the least our negotiations.

[1] Perry's last despatch preceding the one here quoted was No. 41, dated at sea February 9, 1854 (serial 751, pp. 113–15); his No. 40 was dated at Naha, Loochoo, February 2, 1854 (*ibid.*, 141–45); and his No. 39 was dated at Naha January 25, 1854 (*ibid.*, 108–12).

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The report circulated at Shanghae that the Russians had effected a Treaty with the Japanese Government at their recent visit to Nangasaki is entirely without foundation, I am assured of this officially.

With great respect, I have the honor to be, Your Most Obient Servant,

M, C, PERRY

Commander in Chief U.S. Naval Forces, East India, China and Japan Seas.

To the Honorable JAMES C. DOBBIN
Secretary of the Navy Washington, D.C.

Nº 43. U.S. FLAG SHIP POWHATAN

Off the Town of Kana-gawa, Yedo Bay, Japan, April 1st 1854.

SIR, Referring to my despatch No. 42 sent by the "Susquehanna" by way of China, and to the notes which accompanied it, duplicates of the same being herewith forwarded; I have now the honor to acquaint the Department that a Treaty of peace and Amity between the United States and Japan was yesterday signed by me, and by the four Commissioners especially delegated by the Emperor, which documents will be despatched to Washington, in Charge of Commander Henry A. Adams, to sail for California in the "Saratoga" on Tuesday the 4th Inst.

The accompanying notes which have been continued to the present day will furnish all necessary details, and I have only to invite the attention of the Department to the difficulties I have been called upon to encounter in contesting the numerous objections advanced by the Japanese, and more particularly with respect to the wording of the Several Articles of the Compact, and I refer to this solely to account for the singularity of the phraseology, and the omission of some non essential points which are usually found in papers of the kind;—this explanation would seem to be necessary for the information of the Senate, to which body the Treaty will be referred.

Great and insuperable objections were interposed to the delay in making the treaty binding until it should be ratified by the President and Senate, and the ratifications exchanged, the propriety of which they could not or would not understand, remarking that when signed by them it would be honorably and scrupulously observed by the Imperial Government, and they could see no reason why it should not be so observed by the Government and people of the United States; I endeavored in vain to make them understand the nature of our federal Compact, and failing to do this thought it the wiser policy to acquiesce in their pertinaceous scruples, knowing that this course could not have the slightest weight in the practical operation of the treaty, or in making it less advantageous to the United States, and being aware also that all the concessions agreed to were to come from them;—they asked for nothing but the friendship and forbearance of the United States, stating repeatedly that the laws of Japan had been so long established and were so closely connected with all the machinery of the Government, that however they and the more enlightened of the Community might be disposed to encourage a more liberal intercourse with strangers, the integrity of the institutions of the Empire would be endangered by a too sudden change, and it is worthy of remark that the latter part of the 3d Article of the Treaty was altered at their request.

The following words introduced by me, being changed for those immediately below them.

Words proposed by me. "And the Government of the United States will pay "all the expenses incurred in the rescue and support of such shipwrecked persons."

Words substituted by request of Japanese Commissioners. "And the expenses "incurred in the rescue and support of Americans and Japanese who may thus be "thrown upon the shores of either nation, are not to be refunded."

I hope and trust that the trifling informalities which appear in the wording of the treaty and which were unavoidable, may be overlooked by the powers at home in consideration of the peculiarities and prejudices of those with whom I have had to treat, and more especially from motives of humanity and in view of the advantages which the arrangement offers to our Shipping in this part of the world, and to the whaling vessels in particular. It has been mentioned by many of the officers that more whales have been seen since we reached this vicinity than during the whole former part of the cruise.

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From this date those in pursuit of whales may have no apprehensions of approaching the Coast of Japan and of the fearful consequences of Shipwreck upon its hitherto unhospitable shores, and in twelve months they will have the privilege of resorting to two convenient ports for refreshment and repair, and receive kindness and such supplies as the Country can furnish, and what is more, not a single Port in the Empire will be shut to vessels in distress.

The note lettered A.A. hereto appended, refers to some of the changes in the phraseology of the Treaty which were found necessary to satisfy the objection of the Japanese Commissioners.

I have great pleasure in bearing witness to the prompt and efficient aid rendered in all these transactions by Captain Abbot, and to Commanders Kelly, Buchanan, Adams, Walker, Pope and Lee, and to Lieutenants Commandant Boyle, Sinclair and Glasson, and to their respective Officers, as also to the Officers of this Ship.

The Japanese Commissioners have promised to have a few tons of Coal in readiness on my return from Hakodade to Simoda, in order that its quality may be tested by the Steamers. They also assure me that new mines shall be opened & worked, & that a Depot shall be established at Simoda.

With great Respect, I am Sir Your Ob'dt Serv't

M, C, PERRY

Comm^r in Chief U.S. Naval Forces East India, China & Japan Seas.

The Honorable JAMES C. DOBBIN,
Secretary of the Navy. Washington D.C.

With the foregoing despatches Commodore Perry enclosed somewhat detailed accounts of the events from day to day which he calls "notes"; these are here printed, but with some rearrangement, so as to include with the text thereof various papers annexed thereto (*ibid.*, 118–41, 147–50); excerpts from the more extensive report in Narrative, I, 326–92, and from Williams, are inserted; and, with permission of the Asiatic Society of Japan, there are also included quotations from the very interesting record for the period from February 16 to April 10, 1854 (19th day of the 1st month to 13th day of the 3d month of the 7th year of Kaei), titled and hereinafter cited as "Diary of an Official of the Bakufu", which is translated [1] in 7 Transactions of the Asiatic Society of Japan, 2d series (1931), 98–119:

Notes of transactions which occurred on the occasion of the Second Visit to Japan by the U.S. Squadron in Command of Commodore M. C. Perry.

The Squadron sailing in a line ahead, the Lexington, Vandalia and Macedonian being in tow respectively of the Susquehanna, Powhatan and Mississippi, arrived off Uraga [2] about Two o'clock P.M. of the 13th of February.

[1] The translator was Mr. Eugene H. Dooman, of the Foreign Service of the United States. Mr. Dooman writes (October 20, 1938):

> The original manuscript of the "Diary" does not exist, nor is the identity of the author known. In fact the only extant evidence that such a document was ever written is a manuscript copy found a few years ago among the papers of a provincial family which had no connection with the Bakufu. It contains some notable departures from the known facts, but it also contains internal evidence of being written by some one who was fairly close to the events described.

[2] For this and other places in Yedo Bay mentioned by Commodore Perry, reference is again made to the chart entitled "Western Shore of the Bay of Yedo", one of the fourteen charts bound at the end of volume 2 of the Narrative and which, in the list preceding those charts, is No. 11 and called "Yedo Bay", and to Hydrographic Office Chart No. 1291, "Tokyo Kaiwan".

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As orders had been given similar to those issued by me in July last, no communication was allowed with any one from Shore, and though the Ships in passing the City were intercepted by Government boats, the officials on board were beckoned not to venture alongside.

They followed us however to the position designated in my instructions as the rendezvous of the Squadron, and called in our Chart, the "American Anchorage", and where the six above named Ships anchored, the Southampton having arrived in advance.

It was not long before the Government or Mandarine boats were alongside the Flag Ship with a request from the Japanese officers that they might be admitted on board, but as I had caused the extra or Captains Cabin to be removed from the "Susquehanna" to the "Powhatan", in view of changing my Flag to that Ship, preparatory to the return of the former to China, and as I could not consistently with the system of exclusiveness, which I still pursued, of not seeing any of the subordinates, admit them into my cabin, I directed Capt. Adams to receive them on board the "Powhatan".

Accordingly he proceeded to that Ship accompanied by Messrs Williams and Portman, Interpreters, and Mr Perry,[1] my Secretary. Capt. Adams had been charged by me with precise and special instructions to hear all the Japanese had to say, but to give them no unnecessary information nor to promise anything.

These people [2] who seemed to be Mandarines of middle rank with their Dutch Interpreters, stated that the Emperor in expectation of our arrival had given orders to receive us in the most friendly manner, and had appointed Commissioners of high distinction to meet and confer with me upon the propositions of the President presented in July last. That a Town called "Kama-kura",[3] about 20 miles below Uraga, and the place where the "Macedonian" had got on shore, had been designated for the meeting.

As I had anchored off this Town for the purpose of giving my personal attention to the extrication of the "Macedonian" from the perilous situation in which I found her, and saw enough to satisfy me that it would be absurd to take the Ships there, and suspecting some artful design on the part of the Japanese, I directed Capt. Adams to say that it was altogether unsuitable.

For this answer they were evidently prepared, as after a little more quibbling they declared that although the Emperor preferred Kama-kura, still he would have no objection to the negotiations being conducted at Uraga, where in fact

[1] This was Oliver Hazard Perry, son of Commodore Matthew Calbraith Perry. The latter was a younger brother of Commodore Oliver Hazard Perry (1785–1819) of Lake Erie fame. Each of the two brothers had a son named Oliver Hazard Perry. Oliver, the son of Oliver, served in the Navy as midshipman, passed midshipman, and lieutenant from February 23, 1829, until July 23, 1849. Oliver, the son of Matthew, never had a commission in the Navy or in the Marine Corps; from the records of the War Department it appears that he served during the Mexican War as second and first lieutenant in Company G, First Regiment of Massachusetts Volunteers, from February 12, 1847, to July 25, 1848, and was breveted captain on March 2, 1849 (see Executive Journal, VIII, 36, 55); after his service as secretary to his father he was appointed Consul at Canton on February 19, 1855, and held that post until August 10, 1867 (D.S., 5 Consular Despatches, Canton, No. 9, August 10, 1867, enclosure); he died in 1870. By various writers the records of the two cousins have been confused.

[2] According to Narrative, I, 328, the Japanese deputation "consisted of a high dignitary, who was announced as Kura-kawa-kahie, the two interpreters who had formerly officiated, three grey-robed individuals, who seemed to be making excellent use of their eyes, and turned out to be *metske dwantinger*, literally cross-eyed persons, or those who look in all directions, in other words spies or reporters".

[3] Kamakura is roughly some twenty-five miles' sail from Uraga, but "below" that place only in the sense of being farther from the head of Tokyo Bay. For the location, see Hydrographic Office Chart No. 1291, "Tokyo Kaiwan". As plotted by Perry, Kamakura is shown on the chart entitled "Gulf and Bay of Yedo", one of the fourteen charts bound at the end of volume 2 of the Narrative and which in the list preceding those charts is No. 12 and called "Gulf of Yedo".

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a pavillion had been expressly erected for the purpose, and persons of high rank appointed to receive me, but to this end it would be necessary for all the Ships to return and anchor off that Town.

This proposition I also declined upon the ground of the inconvenience and actual unsafety of the anchorage at this boisterous season, and I directed other and the following reasons to be assigned;—that I felt myself bound to go to Yedo, or to approach with the Ships as near to it as possible; that the anchorage was better higher up the Bay, and I was desirous of securing a smooth place to anchor the Ships, in view of stopping a leak of the "Mississippi", and to examine the bottom of the "Macedonian" with the sub-marine apparatus, to see whether she had sustained much injury whilst on shore.

They replied that Uraga was the only place at which the conferences could be held; that the Emperor had issued a decree to that effect, and it could not be changed.

Captain Adams at this stage of the conference sent Mr Perry to communicate to me this apparent ultimatum of the Japanese, but I immediately ordered him back with a message, that, for reasons already assigned, I would not go to Uraga, but would consent to meet the Commissioners any where between the "American Anchorage" and Yedo; that I would not recede from the point then occupied by the Squadron, but would be more disposed to move higher up the Bay. During this interview many compliments and acts of courtesy were interchanged between the American and Japanese officers; refreshments were served, and offers of supplies made by the latter, but in adherence to my instructions not a single point was conceded.[1]

On the 15th the same officials accompanied by others again visited the "Powhatan", where they were received by Capt. Adams, assisted as before. The same arguments were urged to induce the removal of the Ships to Uraga, but with no better success; an offer was again made for supplying Wood and Water, and such other refreshments as the Ships needed, but they were told that we had abundance of provisions, though in the course of time we should require Wood and Water, which we would be disposed to receive as an article of necessity, even if they declined taking pay for it, but nothing else would be admitted on board the Ships so long as they refused payment for the same, and for reason that the Government of the United States could well pay for whatever might be furnished to its Navy, and would not consent to receive supplies gratuitously.

Parties of officials visited the "Powhatan" on the 16th & 18th ostensibly to enquire after my health and to bring me delicacies of fresh oysters, eggs, confectionary &c, but in reality to renew their arguments and persuasions for the Ships to remove to Uraga, proposing as a sort of compromise, that I should go there with one or two of the Squadron, but I still resisted.

I was convinced that if I receded in the least from the position first assumed by me, it would be considered by the Japanese an advantage gained, and finding that I could be induced to change a predetermined intention in one instance, they might rely on prevailing on me by dint of perseverance to waver in most other cases pending the negotiations; therefore it seemed to be the true policy

[1] The account in the Narrative (I, 328–32) of the conversations that were had from Monday, February 13, to Saturday, February 18, differs somewhat from the story here both in respect of dates and otherwise. The visits of the Japanese officials, which took place, according to the Narrative, on February 13, 14 and 15, are here dated February 13, 15 and 16, respectively (the log book of the *Powhatan* mentions conferences on February 13 and 14). A more important discrepancy is that according to the Narrative the Japanese delegation during their first call (February 13) proposed Uraga as the place of the conference and put forward Kamakura the next day; but from these "notes" of Commodore Perry it appears that on February 13 the Japanese officials first proposed Kamakura and, when this was declined, made their second proposal of Uraga. The journal of Williams for this period (pp. 100–107) gives more details as to names, etc., and in general is consistent with the account in the Narrative, though "Hamakawa" is written for Kamakura. Commodore Perry was ill at the time. Intercourse from February 17 to 20 is reported in Diary of an Official of the Bakufu, 98–99.

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to hold out at all hazards, and rather to establish for myself a character for unreasonable obstinacy, than that of a yielding disposition. I knew that upon the impression thus formed by them, would in a measure hinge the tenor of our future negotiations, and the Sequel will show that I was right in my conclusions. Indeed in conducting all my business with these very sagacious and deceitful people I have found it profitable to bring to my aid the experience gained in former and by no means limited intercourse with the inhabitants of strange lands, civilized and barbarian, and this experience has admonished me that with people of forms it is necessary either to set all ceremony aside or to out herod herod in assumed personal consequence and ostentation.

I have adopted the two extremes by an exhibition of great pomp when it could properly be displayed and by avoiding it when such pomp would be inconsistent with the spirit of our institutions;—and never to recognize on any occasion the slightest personal superiority, always meeting the Japanese officials, however exalted their rank with perfect equality, whilst those of comparative distinction of their own Nation were cringing and kneeling to them; and for motives of policy and to give greater importance to my own position I have hitherto studiously kept myself aloof from intercourse with any of the subordinates of the Court, making it known that I would communicate with none but the Princes of the Empire. Up to this time I have succeeded far beyond my expectations in maintaining this extreme point of diplomacy, and as I believe to very great advantage.

That there should be no misapprehension of my intentions, I prepared and directed the following note to be read to the Japanese.

"U.S. Steam Frigate Powhatan,
"*American Anchorage, Yedo Bay. February 18th 1854.*

"The Commodore expects to be received at Yedo agreeably to the customs "of all Countries.

"In consideration of the size of our Ships and their great value, he cannot "return to the anchorage at Uraga, nor even remain at this place much longer, "but will have to go higher up the Bay towards Yedo, where the vessels "can be more secure.

"If the great man (Chief Commissioner) will appoint an officer of proper "rank to meet Capt. Adams on shore near where the Ships are now lying, "to determine when and where the interview with the Commodore shall "take place, he must let us know by noon of Tuesday next.[1]

"The Commodore will be happy to place a Ship at the disposal of the "great man, to bring him up to the place of interview and take him back "again to Uraga if he wishes it.

"When the officer comes to meet Capt. Adams, he had better bring a letter "to show that he has proper authority, and a person must be sent to conduct "Captain Adams to the place of meeting."

Visits were made to the Powhatan by the officials on the 19th (Sunday) bringing with them presents of refreshments, they were told that the day was set apart by the Americans as their Sabbath, but as they had come a great distance in cold and boisterous weather on an errand of kindness, they would on that account be politely received, but in future no official intercourse would be allowed on that day.

At this interview one of the principal Interpreters [2] after the others had retired took Captain Adams aside, and informed him in strict confidence that the Emperor had given orders to his Commissioners to receive and entertain most favourably the propositions of the President presented by me but nothing would be done to further the desired object unless I consented to have the meeting at Uraga.

Receiving no satisfactory reply to their suggestions of yesterday, the officials visited the Powhatan again to-day, the 20th, and were told that out of respect to the Commissioners, who were detained at Uraga [3] in expectation of seeing me,

[1] February 21.

[2] Hori Tatsunosuke (see Williams, 107–8).

[3] Hayashi and some of the other Commissioners had been at Uraga since February 16 (Diary of an Official of the Bakufu, 98).

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I would send Captain Adams to that place in one of the Ships to call upon them and to assure them personally and by letter that I would not go there myself; . . .

In Narrative, I, 332–33, is the following account of the visit on board the *Powhatan* on February 20:

The next day there was another visit, with the usual ceremonies, and a present of oysters for the Commodore.

The Japanese brought with them a short dispatch from the high commissioners, addressed to the Commodore, written in Japanese and Dutch, stating their instructions from the government. The translation is as follows:

> "We are compelled by the order of the Emperor to meet the ambassador of the President of the United States of America either at Kama-kura or Uraga.
>
> "In the interim we shall talk about the negotiations of commerce and the influence it must exercise upon the well-being of the Japanese and American nations. It is out of the question now. This is all according to truth."

This document having been laid before the Commodore, he submitted the following answer:

> "The Commodore, for the reasons before given, cannot return to Uraga. His instructions are to receive the answer of the Emperor to the President's letter at Yedo."

The Japanese having received and perused the answer attentively, conferred with each other, and then promised that it should be submitted to the high officer. Captain Adams now informed them that it was his intention, under orders, to go down to Uraga the next day to declare in person to the high officer what had just been delivered in writing from the Commodore. The Japanese seemed very anxious to know if he would be accompanied by a very large party, and seemed quite tranquilized when told that there would be a few officers only. They promised that a boat should be in readiness, and all other preparations made for the reception. In the course of a general conversation they were told that the following Wednesday would be the anniversary of Washington's birth-day, and that a salute would, in consequence, be fired. They seemed perfectly acquainted with the name of the great father of our country, and expressed a desire to participate in celebrating the occasion, asking to be permitted to come off to see the guns fired. They were, of course, politely invited, and requested to bring their ladies with them; the latter part of the invitation they, however, jeered at as a very amusing but quite an impracticable joke.

Commodore Perry's "notes" continue with the following record of the occurrences of February 21 and 22:

accordingly on the 21st the same officers came from Uraga to accompany Capt. Adams to that place and to introduce him to the Japanese Commissioners; they were invited to take passage in the Vandalia, and did so.

Capt. Adams was the bearer of a Note[1] from me of which the following is a Copy.

> "U.S. Flag Ship Powhatan
> "*American Anchorage, Yedo Bay. February 20th 1854.*
>
> "The undersigned is highly gratified to learn through the officers of His "Majesty who have visited the Flag Ship, that the Imperial Court has come "to the conclusion to respond, in the most cordial manner to the propositions "of the President of the United States, which the undersigned had the honor "to present in July last.

[1] This was delivered written in Chinese (see Diary of an Official of the Bakufu, 99).

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"Inasmuch as the anchorage at Uraga is unsafe and inconvenient, and "considering the great size and value of the Steamers composing a part of "the Command of the undersigned, he does not consider himself justified in "removing to that place; on the contrary he deems it necessary to seek a "more commodious harbor higher up the Bay, and as his instructions direct "him to present himself at Yedo, it is desirable that he should approach as "near as possible to that City, as well for the better convenience of communi-"cation, as with reference also to the arrangement and exhibition of the "various presents sent by the President to His Imperial Majesty.

"As the mission of the undersigned is of a most friendly character, he is "not prepared to anticipate any objection to his reception at the Seat of "Government, conformably to the usages of all the Nations of Europe and "America, and he hopes that when the Steamers shall have reached the "vicinity of the City and secured more suitable moorings he may have the "honor of receiving on board his Ship such distinguished members of the "Imperial Court, as may be desirous of viewing the Steamers and witnessing "the working of their machinery.

"This Communication will be presented by Commander H. A. Adams, "Captain of the Fleet, who is empowered to receive any written proposition "addressed to the Undersigned, and place at the disposal of the Commissioners "of His Imperial Majesty, one of the Vessels of the Squadron.

"With the highest Respect.

(Signed) M. C. PERRY.

"*Comm^r. in Chief. U.S. Naval Forces East India, China, & Japan Seas.*"

It was quite calm in the morning and the Vandalia did not get under way until near noon, but before she had reached Uraga, a strong gale from the South West and directly ahead, prevented her from reaching the Port, making it necessary for her to anchor under "Point Rubicon", and Capt. Adams with his party did not land at the Town until the following day, the 22nd.

He was courteously received by one of the Commissioners, Izawa. Prince of Mimasaki, at the Pavilion erected purposely for my reception, and presenting my note was told that a reply would be handed to him on the following day, and after partaking of some slight refreshments, he returned to the Vandalia, which he had scarcely reached before it again began to blow, causing much anxiety to Commander Pope, the anchorage proving very much exposed and consequently unsafe.

Capt. Adams particularly noticed the position of the building erected for the meeting of the Commissioners, as being placed in a deep gorge near to the Shore, and fenced in by pallisades or stakes; on this being told to me, I at once declared that such obstructions would not have been tolerated, and Capt. Adams, as he informed me, assured the Japanese that if I had landed at Uraga, my first act would have been to have ordered the demolition of this barricade.

The 22^d^ being the anniversary of the birth of Washington, all the Ships of the Squadron fired the usual salute. Many of the Japanese gentlemen came by permission on board the Flag Ship to witness the firing, with which they were much interested; the most intelligent of them having heard of the name of Washington, though they had very vague notions of his history and character.

The visit of Commander Adams to Uraga, February 22 to 24, is thus described in Narrative, I, 334–37 (compare Diary of an Official of the Bakufu, 99–100):

It being the twenty-second of February, Washington's birthday, the Vandalia commenced at noon firing a salute in honor of the occasion, and amidst the salvo of artillery Captain Adams left the ship, accompanied by a score of officers and attendants, and landed at Uraga, where they were met by a large party of Japanese officials, who conducted them to a wooden pavilion, which evidently had been but lately constructed.

Captain Adams and his suite were ushered into a large hall, some fifty feet long and forty wide. The floor was spread with soft mats of very fine texture,

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and at a distance of several feet from the walls, on either side, were arranged long settees covered with what appeared to be a red felt; in front of them were tables spread with a silken crape.

The Americans were invited, on entering, to take their seats on the left hand, which is esteemed by the Japanese the place of honor; this they had no sooner done than the Japanese prince, accompanied by two other high dignitaries, entered the hall, through a curtained opening which led into another compartment. As soon as these dignitaries presented themselves, the governor of Uraga, the interpreters, and various Japanese subordinates, who had accompanied the Americans, dropped at once upon their knees—a position they retained throughout the interview—and bowed their heads to the ground. The prince and his two associates took their seats on the right, opposite to the American officers, and a file of Japanese soldiers, amounting to half a hundred, marched in and ranged themselves, on their knees, behind the three dignitaries, in the space between their backs and the wall.

The prince, with his robes of richly embroidered silk, his fine presence, his benevolent and intelligent face, and his courtly manners, made quite an imposing appearance.

He first addressed Captain Adams, rising as he spoke, and expressed his pleasure at seeing him. His interpreters translated his Japanese into Dutch, which was then repeated in English by the American interpreter, Mr. Portman. The audience then commenced in form, and was conducted throughout with the most friendly expression of feeling on both sides.

Captain Adams commenced by stating, that it was quite evident that Uraga was not a proper place for the ships, since the anchorage was so much exposed. The Japanese replied, that it had been ordered by the Emperor to receive the Admiral there, and to deliver the answer to the President's letter there. Captain Adams, without at the moment pushing this subject further, handed his card to the prince, and requested his in return. He was told that he should have it in a few minutes, when the Japanese prince, requesting to be excused for a few moments, retired through the curtained door into an adjacent apartment. In the meantime the attendants handed round tea, in small China cups handsomely adorned, and borne upon wooden trays beautifully lacquered. The Japanese interpreters apologised for the meagreness of the repast, and entered into an informal conversation, in the course of which they asked for the names of the American officers who were present, and inquired whether they were satisfied with Uraga as a proper place for the reception of the President's letter.

This subject was uppermost in their minds, and they seemed resolved to press it on all occasions, as they were very desirous of preventing any nearer approach of the squadron to Yedo; being instructed, no doubt, to attempt to accomplish this purpose at all hazards. They were told that Captain Adams had a letter upon the subject from the Commodore, and were reminded of the severe weather to which the Vandalia had been exposed, and how impossible it was to place the squadron in a position so little protected against the stormy season then prevailing.

The prince now entered and his card was handed to Captain Adams, upon which was recorded his full name and title, thus: Hayashi-Daigaku-no-kami, *i.e.*, Hayashi, prince of Daigaku.

Captain Adams now handed the Commodore's letter, which has already been given in full, to the prince, accompanying it with a statement in regard to the insecure anchorage at Uraga, and the necessity of having shelter, space, and smooth water, for mooring the squadron, and repairing one of the ships which had become leaky. He also emphatically declared that it was quite impossible for the Commodore to come to Uraga, but that he would be very happy to send one of his steamers to convey the prince up the bay to a place of meeting, near the anchorage of the American ships.

The prince and his two coadjutors now retired to consider the Commodore's letter. In the meantime refreshments were presented, consisting of tea, of a cake resembling our sponge cake, candy, various fruits, and their saki.

A general conversation ensued in regard to the building which the Japanese said had been especially constructed for the meeting with the Commodore, the depth of the harbor, and other points of no material interest.

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The Japanese interpreters, in answer to the objections urged against the security of the port of Uraga, insisted that it was perfectly safe, and requested Captain Adams to make a survey of it, in order to convince himself; and again and again earnestly urged upon him to entreat the Commodore to bring his ships there, and meet the Japanese high officers, who had been appointed to treat with him; saying that if he would come the whole treaty might be arranged before night. Captain Adams, in answer, said that he would inform the Commodore, when the conversation was interrupted by the reappearance of the three Japanese high dignitaries. Upon entering they announced that they had carefully perused the Commodore's letter three of four times, but were not prepared to give an answer, as they would be obliged to consult the other high officers appointed by the Emperor, and who were now in waiting at Uraga. On being asked when the answer would be ready, they appointed the third day after the interview. Captain Adams strove to impress upon them the necessity of dispatch, in consequence of the insecurity of the ship in the prevailing stormy weather at Uraga, and of explicitness in their answer, as the Commodore was anxious to bring matters to a conclusion, and to send to America one of his ships to report progress in the negotiations, and prevent others from coming out. The conference now being at an end, the prince and his coadjutors bowed politely and retired.

The weather being stormy and the water in the bay very rough, the American officers delayed their return to the Vandalia, and occupied the interval in strolling about and viewing the neighborhood. Hardly anything could be seen, however, of the town and the people, as the Japanese authorities had, in accordance with their usual custom, hemmed in the shore, on both sides of the audience hall, with cotton screens of some eight feet in height, which excluded the houses from the sight of the strangers. Crowds of men, women, and children could be observed, however, in the distance, thronging upon the surrounding hills, and gazing eagerly at the Americans. When the storm had somewhat abated, Captain Adams and his party, having been presented, in accordance with Japanese practice, with paper parcels containing the remains of the refreshments which had been left upon their plates or salvers, returned to their ship lying off the harbor. Some went back in the Vandalia's boats, while others accepted the offers of the Japanese officials, and put off in their craft. The superior excellence of the Japanese boats, in a sea, was admirably proved, by the fact that those on board of them reached the ship with dry jackets while the others were wet through and through by the dashing spray. The use of the scull instead of the oar, may partially account for this advantage of the Japanese boats, although their construction has something to do with it. The sculls never leave the water, while the oars are constantly in and out, dipping up considerable spray, which at every stroke is blown, in case of a high wind, all over the persons in a boat of our usual construction.

On the next morning (February 23) the Vandalia was still lying off Uraga, when our old acquaintance, Yezaiman, the governor of Uraga, presented himself. This, it will be remembered, was the dignitary who had figured so conspicuously during the first visit of the squadron to the Bay of Yedo. His absence hitherto had created great surprise, and it was naturally feared that his conduct on the previous occasion had not been approved of by his government, and that he had fallen into disgrace, or possibly had been reduced to the disagreeable necessity of disembowelling himself. He however explained his long absence on the score of illness, and the immense pressure of public business. He expressed great pleasure in seeing his old acquaintances, and proved himself the same affable, courteous gentleman, as on all previous occasions. Yezaiman explained the object of his visit by presenting a letter from himself, in which he informally, as he stated, though undoubtedly with the connivance of the government, repeated the assurances of the friendly disposition of the Emperor, and earnestly solicited Captain Adams to use his influence with the "Admiral" to prevail upon him to concede the point in regard to Uraga. Everything, of course, was referred to Commodore Perry, although the belief was expressed that he would resolutely adhere to his original determination. Yezaiman, having promised that the answer of the high officers to the Commodore's letter should be brought on board the next day, took his departure.

Accordingly early the next morning (February 24) the Japanese, having brought the dispatch in answer to the Commodore's letter, and having taken the occasion

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of urging their views about Uraga, for their first and last word was perpetually Uraga! Uraga! the Vandalia got under way to join the squadron at the American anchorage. The ship, however, had not proceeded far, when the steamers and sailing vessels were observed in the distance ahead, standing up the bay.

Commodore Perry's "notes" continue as follows, including a report of the meeting of February 25 on board the *Powhatan:*

As I had little hope of any favourable result from this visit of Capt. Adams, I determined to put my threat in execution from which I anticipated much advantage, and actually removed the Squadron during his absence to within sight of Yedo, so near indeed that we could distinctly hear the striking of the City bells during the night.

I may as well remark here that from the moment of the anchoring of the Squadron in the Bay, the Surveying boats were actively employed in exploring the upper part of this magnificent sheet of Water; magnificent beyond anything of the kind I have ever before seen.

As a measure of precaution these boats always sounded in advance of the Ships, and when the Vandalia with Capt. Adams on board charged with the reply of the Japanese Commissioners to my letter, had rejoined the Flag Ship, the boats were absent engaged in further explorations towards the City; and though this letter intimated the impossibility of holding the conference at any other place than Uraga, it had not been in my hands an hour [1] before Kayama Yezaimon, Governor of Uraga, made his appearance on board the Powhatan with the alleged object of receiving a reply from me, but as it will appear for another purpose.

Here follows a translation of the letter of the Commissioner.

"To Admiral M. C. PERRY,

"The Undersigned Ambassadors of the Emperor of Japan have perused "and understood the letter of the Lord Admiral, and in reply may remark.

"The Lord Admiral is right in going up to Yedo to be received there "according to the custom in Europe and America. According to the Japanese "custom Ambassadors are commissioned, and a building erected for the "reception of Ambassadors from Foreign Countries in a friendly manner "and with high consideration.

"The Emperor has sent us to Uraga to receive the Admiral with the highest "honor, and to extend the Japanese hospitality towards him, and have the "interview at that place, in compliance with the order of the Emperor, "regardless of the customs of Foreign Countries.

"We wish this to be well understood; we desire the Admiral to come to "Uraga, there to have the interview with us in the building aforesaid, and "would gratefully acknowledge the friendly meeting of the Lord Admiral in "complying with this order of the Emperor, and our own wishes.

"Our best wishes for the health of the Admiral.

(Signed) HAYASHI DAIGAKU NO-KAMI.[2]

"The 27th SIOGOOTS.[3] 1854.

Yezaimon first commenced by inquiring whether I was still determined not to return to Uraga, and being answered in the affirmative, he again offered supplies and was again told that we would receive Wood and Water, to which he said that these articles would be cheerfully furnished but they could only be obtained

[1] This was on February 25 (see Narrative, I, 337).

[2] Hayashi was first Japanese Plenipotentiary; he was "chief Professor of the Chinese language and literature in the Dai Gakkō (Great School, or University) . . . His rank was that of a Hatamoto (flag-bearer) and his title Dai Gaku no Kami, or Regent of the University (not 'Prince' of Dai Gaku)", according to Griffis, *op. cit.*, 350. In Diary of an Official of the Bakufu, Hayashi is styled "Lord Rector of the University".

[3] February 24.

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at Uraga, and he was informed by my order that it was a matter of indifference to me from whence they came, as I should not go to Uraga, and if the Japanese did not bring Water to us, I would send on shore and procure it by some means.

Seeing that I was immovable in purpose and evidently inclined to approach nearer to Yedo, he suddenly abandoned the previously assured ultimatum of the Commissioners as to the place of meeting, and suggested as a substitute a very convenient spot directly opposite the Ships; [1] to this proposition I at once acceded, the situation suiting my views in all respects, being near to Yedo, with safe and commodious anchorage at a mile distant from the shore, and affording abundant space for the landing and preparing of the presents.

In Williams, 114–15, is this report of the meeting of February 25:

Much to our surprise, Yezaimon and two interpreters, one of whom, Namura Gohadjiro, had lately come into action and enunciates better then either of the others, came on board. They were received in the rear room on account of Captain McClung's illness, where tea and toddy and cakes were served as usual. He said he had come to get the answer to the letter brought up by Captain Adams, and it was promised to be ready by Monday noon. Intimations were given that if they would bring us wood and water we would pay for it, to which they answered that they could be furnished by bringing them up from Uraga, and hoped our boats would not go ashore to get them. We rejoined that we were not in need of such supplies and, as we knew wood and water could both be procured ashore near us, it was needless for them to bring such things from Uraga, and we would not go there to get them. They must themselves have seen two days ago how rough it was at Uraga and how impossible it would have been to receive supplies from off shore. All this talking occupied some time, during which several things were exhibited and an india-rubber globe which Perry made Yezaimon a present of examined; he was quite as polite and chatty as usual and we were glad to see him, and he apparently to see us.

Again the question of going down to Uraga was brought forward, and declined. "Well, then, can you go ashore near here this afternoon and pick out a suitable place?" said he to Captain Adams. Thus the whole point was given in, and this was doubtless decided on by the commissioner at Uraga as soon as he heard the ships had gone up the bay. The manner in which it was done showed that Yezaimon was sent up to settle a place for the interview before we got any nearer Yedo, but it came in during the conversation, as a man gives up a desperate case, by a complete turn-round. A place was pointed out in shore where he supposed a good spot could be found, and it was decided to go immediately, it being now a quarter of three o'clock. Captain Buchanan went with Captain Adams in another boat, preceded by Yezaimon, and taking a southwest direction, we landed about five miles from the ships, sounding to ascertain the deepest water, at a hamlet below Kanagawa called Yokohama. The Commodore demands a locality which can be covered by the shipping. A vacant spot of ground was selected near the hamlet, now covered with a promising wheatfield, as suitable for the interview; it was coolly proposed before reaching this spot to demolish three or four houses in the village to make room for the new buildings necessary, Yezaimon seeming to think the property of the villagers of not the slightest consideration.

The "notes" of Commodore Perry continue thus for the period from February 25 to March 8, 1854:

Now let us look into the deceitful conduct of these people. For the last ten days they have interposed all possible objections to the movement of the Ships higher up the Bay, and endeavoured by every means to persuade me to return to Uraga, and when they found I could not be deceived by their cajolery, and had

[1] According to Diary of an Official of the Bakufu, 100–101, this took place on February 27; it is there said that on February 25 instructions from Yedo were received by the Japanese Commissioners to the effect that Perry should be met at Kanagawa, where the Commissioners arrived the next day.

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actually approached within eight miles of the Capital, they suddenly abandoned the position from which they so often assured me they could not be moved, and proposed unconditionally to concede what I had with equal but more successful pertinaceously contended for.

Before deciding positively upon accepting this last proposal, I sent Commander Adams with other officers to examine the place last appointed for the conference, who soon returned with a most favorable report. The Surveying boats shortly after came in with information that they had found Six Fathoms of Water within four miles of Yedo. This intelligence at once gave me the clue to the sudden change of policy of the Japanese, but as I had never entertained the idea of abandoning the intention of getting as near with the Ships to this famed Capital as the depth of Water would allow, and as the place of meeting last proposed suited exactly, I was satisfied with the arrangement, and accordingly prepared the following letter to be presented to the Commissioners on the first day of meeting, as a reply to the one addressed to me from Uraga, and sent by Captain Adams.

"U.S. FLAG SHIP POWHATAN.

"*At Anchor off the town of Yoku-hama Yedo Bay, March 1st 1854.*

"To His Highness HAYASHI-DAIGAKU-NO-KAMI.

&c. &c. &c.

"YOUR EXCELLENCY, The letter of Your Excellency from Uraga was duly "delivered by Captain Adams, and shortly after when it was ascertained "that I could not agree to return to Uraga, Kayama Yezaimon suggested "that the negotiations might be conducted at a village opposite the present "anchorage of the Squadron.

"Being exceedingly desirous of meeting the wishes of Your Excellency in "every way consistent with the honor and interest of my Country, and "learning that the place pointed out was in all respects convenient for the "purpose, I at once consented to defer my visit to Yedo, until after the "completion of the negotiations.

"I the more readily entered into this arrangement as on examination of "the Port by the Surveying boats it has been found that the Ships can "approach near to the City where I propose at some future time to anchor "them, as well to do honor to His Imperial Majesty by salutes &c, as to be "in full view of the Palace, and convenient to be visited by such of the Court "as may desire to examine the Steamers and their Machinery, and I hardly "need say that they will be kindly and politely received.

"With the most profound Respect

(Signed) M. C. PERRY,

"*Comm^d. in Chief. U.S. Naval Forces East India, China & Japan Seas and Special Ambassador to Japan.*"

It struck me that it was better to have no treaty, than one that would in the least compromise the dignity of the American Character, and to agree to any arrangement that would recognise in the remotest degree the restrictions submitted to by the Dutch, could not for a moment be thought of.

As soon as the weather would permit, the Surveying boats were sent to examine the anchorage opposite the place agreed upon for the Conference, and the erection of another Council house, and after receiving a favorable report, I directed[1] the Squadron to be moored in a line abreast within a mile of Yoku-hama, and covering with their heavy Guns an extent of shore of five miles.

On anchoring we observed great numbers of Workmen busily employed in the erection of a large irregular edifice, intended as a substitute for the one abandoned at Uraga.

It is probable, that arrogance may be charged against me for persisting as I did, and against the judgement of all about me, in changing the place of conference, and thus compelling four Princes of the Empire to follow the Squadron, and subjecting the Government to the trouble and expense of erecting another building, but I was simply adhering to a course of policy determined on after mature reflection, and which had hitherto worked so well.

[1] On February 27 (see Narrative, I, 340).

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The ships had not been long at Anchor before a number of the Japanese Officials came on board the Flag Ship and stated that the Imperial Commissioners would be ready to receive me so soon as the building should be finished.

They made daily visits to the Ship and brought me the names of the dignitaries who have been empowered by the Emperor to meet me.[1]

Here follow their names & titles.

Hayashi (Dai-gaku-no-kami.) Member of Council.
Ido. Prince of Tsu-Sima.
Izawa. Prince of Mima-Saki.
Udono. (Mimbu-Shiyoyu.) Member of Board of Revenue.

Subsequently a fifth,[2] Matsusaki Michitaro, was added to the number, so that being myself alone, the odds were as one to five.

It was not long before the building was completed and furnished, and I was duly notified that the five Commissioners would be ready to receive me on Wednesday the 8th of March at noon. Accordingly every preparation was made in the Squadron to distinguish the occasion of our second landing in Japan by all necessary parade, knowing as I well did the importance & moral influence of such show.

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[1] The corresponding passages of the Narrative are these (I, 340–41):

> Yezaiman and his interpreters, to whom there was now added a new one, of the name of Moryama Yenoske, who spoke a little English, which he was said to have acquired from an American sailor who had been a captive in Japan, and was one of those taken away by the Preble, came off daily to the ships. As the building on shore was in progress, the details of its erection, and the prospective interview ashore, were naturally daily topics of conversation. The coming ceremonies were spoken of, and the rank and number of those who were to participate in them discussed. Yezaiman, in accordance with the request of the Commodore, submitted the names and credentials of the high commissioners who were to represent the government of Japan at the approaching conference. The following is a translation of the letter of credence of the imperial officers:
>
> HAYASHI DAIGAKU-NO-KAMI, IDO-TSUS-SIMA-NO-KAMI, IZAWA MEMA-SAKI-NO-KAMI, UDONO MIMBUSCO:
>
> You are hereby empowered to hold interviews with his excellency the American ambassador on his arrival, and to negotiate concerning the business which has been communicated to you.
>
> SIOGOOTS. KA-EI-SILSI-NEU. [Seal of the Emperor.]

The date of the instrument is merely the month, which began on January 29 and ended on February 26, 1854.

In Williams' journal for March 5 and 6, 1854, are these sentences regarding the credentials and the list of personages (Williams, 121–22):

> The credentials of Hayashi were also demanded to be brought off for inspection by the Commodore, his own being already in their hands, just as those of the Prince of Idzu were shown last year. . . .
>
> Yezaimon and his company brought off the copy of the commissioner's credentials and his emblazonry, as he promised yesterday; the latter was given on one of his excellency's crape overcoats, brought for accuracy. The list of persons to whom presents are due officially consisted of him and his three associates preceded by the six councillors; but what a cloud of obscurity rests over the distribution of these things to them, from our utter ignorance of the persons here named!

In Narrative, I, 348, footnote, are reproduced the "heraldic devices of the Emperor [*Shogun*] and commissioners, as well as that of Lew Chew".

[2] Only the first four Japanese Commissioners signed the treaty.

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At 11.30 A.M. on the day appointed the escort consisting of about 500 Officers, Seamen and Marines fully armed, embarked in twenty seven barges in Command of Commander Buchanan, and forming a line abreast pulled in good order towards the shore, the escort having landed and drawn up, I followed in my barge, under an appropriate Salute, and landing was received by the Escort and a party of Japanese officials and conducted to the Hall prepared for the Conference, where I found in waiting the five Commissioners, and was invited to be seated opposite the Chief personage.[1]

At this moment salutes were fired, from the Howitzers mounted in the launches, of 21 Guns in honor of the Emperor, and 17 for the Japanese Commissioners. This display in landing was made altogether for purposes of policy in accordance with the reasons already assigned.

This interesting account of the ceremonies of the landing and the opening formalities of the conference of March 8 is from Narrative, I, 344–49:

At an early hour on the 8th of March, the day appointed for the conference with the Japanese commissioners, there was an unusual stir ashore preparatory to the ceremonies of the occasion. The Japanese workmen were busily engaged in adorning the treaty house with streamers and other gay paraphernalia. Two poles were erected, one on either side of the entrance, to which were hung long oblong banners of white cotton cloth with a bright red stripe across the centre. On the peaked roof of the building was placed a tall staff, surmounted with a circular ornament in shape like the upper part of a chandelier, from which was suspended a heavy silken tassel. In the preparation of the place it had been surrounded by the usual enclosure of cloth, which completely excluded it from the view of those without, and, in fact, seemed to enclose it within a sort of prison yard. The Commodore, who saw this arrangement from his ship before he landed, immediately sent an officer on shore to demand what it meant, and, in answer to some frivolous pretext about preventing intrusion and doing honor to the occasion, informed the Japanese that he would forego the honor, and that, until it was completely removed, he could not think of landing. It was immediately taken down by the Japanese.

Bands of flag-bearers, musicians and pikemen manœuvred in order here and there, glistening with their lacquered caps, bright colored costumes, crimson streamers, showy emblazonry, and burnished spears. There was no great military display as on the first visit at Gora-hama, and the few who had the look of soldiers were merely a small body guard, composed of the retainers of the various high dignitaries who were to officiate on the occasion. Crowds of people had gathered from the neighboring towns and villages, and were thronging in curious eagerness on either side of a large open space on the shore, which was kept free from intrusion by barriers, within which none of the spectators were allowed to enter. Two or three officials were seen busily moving about, now directing the workmen, and again checking the disorder among the Japanese multitude.

Soon a large barge came floating down the bay, from the neighboring town of Kanagawa. This was a gaily painted vessel, which, with its decks and open pavilion rising high above the hull, had very much the appearance of one of our western river steamboats, while streamers floated from its three masts, and bright colored flags and variegated drapery adorned the open deck above. This barge bore the Japanese commissioners, and when it had reached to within a short distance of the shore, these dignitaries and their suites disembarked in several boats and hurried to the land. An immense number of Japanese craft of all kinds, each with a tassel at its prow and a square striped flag at its stern, gathered about the bay. The day was fresh and clear, and everything had a cheerful aspect, in spite of the lingering wintry look of the landscape.

The Commodore had made every preparation to distinguish the occasion of his second landing in Japan by all necessary parade, knowing, as he did, the importance

[1] In Diary of an Official of the Bakufu, 102–6, nearly five pages are given to the meeting of March 8, 1854, most of which purports to be a verbatim report of the remarks of Perry and Hayashi.

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and moral influence of such show upon so ceremonious and artificial a people as the Japanese. He had, accordingly, issued orders to the effect that all the marines who could be spared from duty should appear on the occasion in full accoutrement, that the bands of music from the three steamers should be present, and all the officers and sailors that could possibly leave. The officers were to be in undress uniform, frock coats, cap and epaulets, and equipped with swords and pistols. The sailors were to be armed with muskets, cutlasses and pistols, and dressed in blue jackets and trowsers and white frocks. The musicians were each to be supplied with cutlass and pistol, and every man of the escort provided with either musket or pistol cartridge boxes.

At half-past eleven o'clock the escort, consisting of about five hundred officers, seamen and marines, fully armed, embarked in twenty-seven boats, under the command of Commander Buchanan, and forming a line abreast, pulled in good order to the shore. When the escort had landed, the marines were drawn up in a hollow square, leaving a wide open space between them, while the naval officers remained in a group at the wharf. The ship's boats were arranged in two separate divisions of equal numbers on either side of the landing, with their bows pointing in regular order from the shore. The Commodore now embarked from the Powhatan in his barge, under a salute from the Macedonian of seventeen guns. The Commodore, on landing, was received by the group of officers, who, falling into a line, followed him. The bands now struck up a lively tune, and the marines, whose orderly ranks in complete military appointment, with their blue and white uniforms, and glistening bayonets, made quite a martial and effective show, presented arms as the Commodore, followed in procession by his immediate staff, his guard of fine looking sailors and a number of his subordinate officers, proceeded up the shore. A group of richly costumed Japanese guards, or retainers, with banners, flags and streamers, were gathered on each side of the entrance of the treaty house. As the Commodore and his party passed up between these they were met by a large number of Japanese officials who came out, and uncovering, conducted them into the interior of the building. As they entered, by a preconcerted arrangement, howitzers which had been mounted on the bows of the larger ship's boats, that were floating just by the shore, commenced firing in admirable order a salute of twenty-one guns in honor of the Emperor, which were succeeded by a salute of seventeen for Hayashi Daigaku-no-kami, the high commissioner, and the hoisting of the Japanese striped flag from the masthead of the steamer Powhatan in the bay.

The apartment into which the Commodore and his officers first entered was a large hall, arranged in a similar manner to that at Gori-hama. Thick rice-straw mats carpeted the floor, long and wide settees, covered with a red cloth, extended along the sides, with tables spread with the same material arranged in front of them. The windows were composed of panes of oiled paper, through which a subdued and mellow light illuminated the hall, while a comfortable temperature was kept up—for, although the spring, which is early in Japan, had already opened, the weather was chilly—by copper braziers of burning charcoal, which, supported upon lacquered wooden stands, were freely distributed about. Hangings fell from the walls around, with paintings of trees, and representations of various animals and birds, particularly of the crane, with its long neck in every variety of strange involution.

The Commodore and his officers and interpreters had hardly taken their seats on the left, the place of honor, and the various Japanese officials, of whom there was a goodly number, theirs on the right, when the five commissioners entered from an apartment which opened through an entrance at the upper end of the hall. As soon as they presented themselves the subordinate Japanese officials prostrated themselves on their knees, and remained in that attitude during their presence.

The commissioners were certainly august looking personages, and their grave but courteous manners, and their rich flowing robes of silk, set them off to the highest advantage. Their costume consisted of an under garment somewhat similar to the antique doublet, and a pair of very wide and short trowsers of figured silk, while below the legs were encased in white cotton or woolen socks, laced to some distance above the ankles. The socks were so contrived that the great toe was separated from the other four for the passage of the band which attached to

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the sandal, and joined another from the heel at the ankle, where the two were tied together. Over the doublet and trowsers a loose gown of embroidered silk, something in the shape of the clerical robe, with loose sleeves, was worn. This was secured to the waist by a sash, in which are usually thrust the two swords which mark the dignitaries of higher rank. The three princes alone, of all the commissioners, were observed to wear a white inner shirt, or vest, which was exposed at the breast. This was a mark of the very highest rank, and belongs exclusively to princes and the loftiest dignitaries of the Empire.

Hayashi Daigaku-no-kami, prince councillor, was evidently the chief member of the commission, for all matters of importance were referred to him. He was a man of about fifty-five years of age, was handsomely formed, and had a grave and rather saturnine expression of face, though he had a benevolent look and exceedingly courtly manners. Ido, Prince of Tsusima, was probably fifty, or thereabout, and was corpulent and tall in person. He had a rather more vivacious expression than the elder Hayashi. The third and youngest of the princes was the Prince of Mima-saki, who could hardly be much beyond forty years of age, and was far the best looking of the three. He was quite gay, fond of fun and frolic, and had the reputation of being a Lothario. According to the interpreters, Mima-saki entertained more liberal views with respect to foreign intercourse than any of his coadjutors, and seemed to be a great favorite with the Japanese, as he certainly was with all the Americans. His gaiety of heart manifested itself very apparently in his fondness for the music of the bands of the squadron, and he could not keep his hands and feet quiet whenever they struck up a lively air.

Udono, who, though not a prince, was a man of high station, and was known by the title of Mimbu-shiyoyu, or member of the board of revenue, was a tall, passable looking man, but his features were prominent and had much of the Mongolian caste. The fifth and last one of the five commissioners was Matsusaki Michitaro, whose rank and title were not discovered. Indeed, he had not been originally named to the Americans as one of the commissioners. In reply to the inquiries made, they at first said there were four; and afterward, at a subsequent interview, the interpreter remarked, as if casually, that a fifth commissioner had been added. Possibly he was the official public spy appointed to remind the others, by his presence, of their duty, and we may add, danger. Whatever may have been his official position, his precise business in the commission it was difficult to fathom; he was always present at the conference, but took his seat constantly at rather a remote distance from the other dignitaries, on the further end of the sedan. By him there was continually crouched, upon his knees, a scribe, who was constantly employed in taking notes of what was passing, and occasionally under the promptings of his superior. Matsusaki was rather an equivocal character, difficult to understand. As far as could be observed, he did not seem to be called into consultation, at least publicly, and from the circumstance of not sitting with the other commissioners, his rank and powers seemed to be inferior to theirs. This, however, is but conjectural. Our officers, of course, asked no questions, though all agreed in the decidedly unfavorable impression made upon them by Matsusaki. For aught they knew, he might have been the Emperor himself, though it is most unlikely; and if he were, all that can be said is that he was much less polished and agreeable than his prince commissioners. He was, as we have intimated, probably the court spy. He was a man of sixty years of age at least, had a long, drawn-out meagre body, a very yellow bilious face, an uncomfortable dyspeptic expression, which his excessive short-sightedness did not improve, for it caused him, in his efforts at seeing, to give a very wry distortion to a countenance naturally not very handsome.

Moryama Yenoske was the principal interpreter who officiated on the occasion; the same man who figured so conspicuously during the visit of Captain Glynn in the Preble. As soon as the commissioners had taken their seats, Yenoske took his position on his knees, at the feet of Hayashi, the chief, and humbly awaited his orders. The Japanese are never forgetful of the respect which they think due to rank, and graduate their obeisance according to its degrees. . . . The crouching position in which an inferior places himself, when in the presence of his superior in rank, seems very easy to a Japanese, but would be very difficult and painful for one to assume who had not been accustomed to it. The ordinary

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mode pursued is to drop on the knees, cross the feet, and turn up the heels, with the toes, instep, and calves of the legs brought together into close contact.

Sometimes it is mere squatting down with the soles firm upon the ground, the knees bent, and the body crouched low. Yenoske was quite an adept in these manœuvres, as were his coadjutors, and especially the prefect, Kura-kawa-kahei, who was one of the subordinate functionaries present during the conference. . . . The commissioners, after a momentary silence, spoke a word to the prostrate Yenoske, who listened an instant, with downcast eyes, and then by a skilful manœuvre, still upon his knees, moved toward the commissioners' interpreter, and having communicated his message, which proved to be merely the ordinary compliments, with an inquiry after the health of the Commodore and his officers, returned with an appropriate answer to his former position. An interchange of various polite messages having been thus borne backward and forward for several minutes, through the medium of the humble but useful Yenoske, refreshments, consisting of the invariable pipe, tea in porcelain cups, served on lacquered trays, cakes, and some confectionary were handed round.

This description by Williams of the preliminaries of March 8 is more summary, but throws light on what was actually said regarding the "enclosure of cloth" or curtains (Williams, 123–25):

The Commodore's usual good fortune attended him to-day in a fine, clear day, not overmuch cold either. In the morning we observed a long line of curtains on the beach, and a row of posts each side of the house on shore extending down to the water, with curtains stretched along, and inclosing the space in front so as to exclude all the view. This rather annoyed the Commodore, since it looked like fencing us in, as had been done at Uraga with boards, which we desired not to be erected; and he sent Captain Adams and me to have them taken down. In fact, these curtains are designed entirely for show, and to do honor to an occasion; but Perry wants honor to be given in his own style or not at all. A fair breeze soon took us ashore, and half a dozen officials came down to the pier which the workmen were laying of sand bound up in straw bags to see what we wanted. A few remarks from them showed that they feared the Commodore was sick, or something else had happened to prevent the meeting. I told them that he expected to be ashore at noon, and that we had come to see the place beforehand, the jetty for landing, etc., and suggested that as there would be over thirty boats the curtains on each side had better be removed to allow more room along the beach for them to arrange. Instantly, the whole curtain was folded up, the stakes and ropes removed, and a clear beach for landing presented. So the Commodore had his way in this, and I think it was a good move, for thus no obstacle was placed in the way of a view or a ramble; but I put it all on the ground of a small space for boats, and this satisfied them. The rapidity with which the "fortifications" disappeared greatly amused the people on board ship.

Yezaimon and his party came on board about ten o'clock to conduct the party on shore, and amused themselves with the sailors and looking at the gay dresses of the marines. As usual, Saboroske was flying about, crying out at the top of his voice from whatever place he happened to be in. The various ships sent their boats first to the flagship, and by half past eleven all of the guard and officers were ashore, the Commodore leaving at noon under a salute from the "Macedonian." On reaching the shore, the band struck up, and, passing through the lines of the guard attended by Kaheyōye, the whole party went up to the reception hall where Perry met the five commissioners standing in a row in front of a screen of blue silk; we bowed to them, and the whole then filed around and sat on a bench covered with red cloth, while we were also accommodated on a similar bench opposite, the whole company disposing themselves along two rows with a low bench before them to serve for a table. Yenoske then separately introduced each commissioner, and a few others, to the Commodore, after which the former retired, each followed by his sword bearer; a plate of candy was set before each with tea and fire for smoking. The centre was occupied by a few brasiers on stands, but there was no need of them and little heat in them.

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Regarding the conference of March 8, Commodore Perry's "notes" continue as follows:

After suitable interchanges of Courtesy I was requested to retire with my suite to an inner apartment where the necessary business could be conducted undisturbed; accordingly accompanied by the Captain of the Fleet, the two Interpreters and my Secretary, I withdrew with the Commissioners to an adjoining room separated from the principal Hall by a Flag suspended across the entrance. Refreshments having been served, a reply [1] to the letter of the President presented in July last, was handed to me and translated from the Dutch by Mr Portman, and I replied to it verbally. I then handed to the Chief Commissioner a draft of a treaty [2] which I had previously prepared as the basis of one which I was desirous of negotiating with the Imperial Government; this was accompanied by three other papers; one being a reply to the communication of the Chief Commissioner, addressed to me from Uraga, a Copy being appended [3] and marked B.—another a statement of my views with respect to the policy of bringing about a mutually advantageous Compact between the United States and Japan, a Copy also appended and marked C. and the third, a memorandum, likewise appended and marked D.—in further explanation of the motives which would govern me in conducting the negotiations, and asking for certain relaxations of the Japanese laws with respect to the Squadron.

The two papers last mentioned by Commodore Perry as appendices C and D are here inserted:

U.S. Flag Ship Powhatan
Yedo Bay, off the town of Yoku-hama, March 1st 1854.

To His Highness, Hayashi-Daigaku-no-kami,
&c. &c. &c.

Your Excellency, In presenting for the consideration of Your Highness the accompanying draft of a treaty which in all its essential features is identical with that at present subsisting between the United States and China, I again venture to urge upon the Imperial Government of Japan the importance of establishing a friendly understanding with the Nation which I have the honor on this occasion to represent.

It would be needless in me to reiterate the arguments already advanced in support of a measure so fraught with the best interests of the two Nations, and so necessary to the peace and prosperity of Japan.

I have in a former communication remarked that the President of the United States entertains the strongest desire and cherishes a most fervent hope that the Mission which he has entrusted to my charge may result in the accomplishment of a treaty mutually beneficial, and tending to avert by timely negotiation the consequences that would otherwise grow out of collisions certain to arise should the present undefined relations between the two Countries much longer continue.

In the increasing number of American Ships almost daily passing and repassing the territories of Japan, the President is apprehensive of the occurrence of some further act of hostility towards the unoffending Citizens of the United States who may be thrown by misfortune upon your Shores, and hence his wish to establish a treaty of friendship which shall give assurance of the discontinuance of a course of policy on the part of the Japanese altogether at variance with the usages of other Nations and no longer to be tolerated by the United States.

As an evidence of the friendly intentions of the President, and to pay the highest honor to His Imperial Majesty, he has sent me in command of a number of Ships to be increased by others which are to follow, not only to bear to His Majesty the letter which I have already presented, but to evince by every suitable act of kindness the cordial feelings entertained by him towards Japan.

[1] A translation of this communication is quoted later.

[2] This draft is not textually available; but elsewhere it appears that in all essential features it was like the treaty with China of July 3, 1844 (Document 109).

[3] This is Perry's note of March 1, 1854, which is previously quoted.

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That there might be sufficient time allowed for a full consideration of the just and reasonable demands of the President, I took upon myself to withdraw the Ships in July last from the Coast and have now after an absence of Seven months returned in the full expectation of a most satisfactory arrangement.

Another proof of the friendly disposition of the president has been given in his sending for exhibition to the Imperial Court, three of the magnificent Steamers of the United States, of which there are many thousands, large and small in America, and he has also sent for presentation to the Emperor many specimens of the most useful inventions of our Country.

Therefore after all these demonstrations of good will it would be strange if the Japanese Government did not seize upon this very favorable occasion to secure a friendly intercourse with a people anxious to prevent by wise and prudent foresight all causes of future misunderstanding and strife.

It will be observed that there is no Western Nation so intimately connected with the peace and welfare of Japan as the United States, a part of whose territory lies opposite the Imperial Coast, and whose commerce covers the Pacific Ocean and Japan Seas; not less than five hundred large ships being engaged exclusively in those regions in pursuit of Whales; the crews of many of which suffer for want of Water and other refreshments, and it would seem nothing more than common humanity to receive those who may seek shelter in the ports of Japan with kindness and hospitality.

The Government of China has derived much benefit from its treaty with the United States; the purchase of Teas by the Americans during the present year will amount to Three Millions, Six hundred thousand, 3,600,000 Taels; and of Raw and Manufactured Silks to nearly Three millions, 3,000,000. of Taels.

Nearly thirty thousand Subjects of the Emperor of China have visited America, where they have been kindly received and permitted by the American laws to engage in whatever occupation best suited them; they have also been allowed to erect temples, and to enjoy in all freedom their religious rites; all have accumulated money, and some have returned to China after a short absence with sums varying from 300 to 10,000. Taels.

I have adverted to these facts merely to show the advantages that would grow out of such a treaty as I now propose, and to remark again that some amicable arrangement between the two Nations has become positively necessary, and for reasons already explained.

Indeed I shall not dare to return to the United States without carrying with me satisfactory responses to all the proposals of the President, and I must remain until such are placed in my possession.

With the most profound Respect.

(Signed) M. C. PERRY.

Comm^r. in Chief, U.S. Naval Forces East India, China & Japan Seas. And Special Ambassador to Japan.

Copy of Note handed to the First Commissioner on Wednesday, 8th March, and verbally discussed through the Interpreters at the time.

The American Ambassador learns with pleasure that the Japanese Government is disposed to enter into some friendly arrangement with the United States. As such is happily the case it would be much more advantageous to both Nations, and especially to Japan if a treaty is agreed upon, even if it be of short duration, for reason that the Citizens and Subjects of both the contracting powers would be mutually bound by law to conform to all its stipulations, and thus prevent mistakes and consequent disputes.

This is the practice with all other Nations, and such is the present condition of the World that these treaties have become necessary to avert contention and War. The obligations to conform to them are enjoined as well by considerations of honor, as the preservation of the peace and prosperity of the respective Countries, and it would be impossible for the Western Nations to preserve friendly intercourse if it were not for similar treaties.

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Although we have abundance of prepared provisions in the Squadron, it would be desirable to obtain daily supplies of fresh meat, vegetables &c, for which we would pay the prices demanded. Wood and Water will of course be wanted, and for a supply of which we shall be thankful.

The health of the Officers and men require that they should have exercise on shore, and though I have hitherto, out of respect to the Japanese laws, forbidden any one to land, except for purposes of duty, I feel assured that some arrangement will be made to admit of some reasonable intercourse with the neighborhood.

Copies of the Surveys which the Officers are employed in making will be presented to the Imperial Government, and to make them more perfect, it will be necessary to place Signal poles at some points on shore by which to measure the angles, therefore it is requested that the officers landing for such purposes may not be molested.

It is thought that the business of the negotiation would be facilitated by submitting the several questions and replies that may arise, in writing.

(Signed) M. C. PERRY.

The proceedings of the conference of March 8, after the opening ceremonies and up to this point, are reported in Narrative, I, 349–50, in these four paragraphs:

It was now proposed by the commissioners that an adjournment should take place to another room, which they stated would accommodate comfortably about ten persons. Accordingly, the Commodore having assented, he, accompanied by the captain of the fleet, his two interpreters and secretary, were conducted into another and much smaller room, the entrance to which was only separated from the principal hall by a blue silk flag, ornamented in the centre with the embroidered arms of Japan. On entering, the commissioners were found already seated on the right, they having withdrawn previously to the Commodore, and arranged themselves in rank upon one of the red divans, which extended along the sides of the apartment.

The Commodore and his party took their seats on the left, and business commenced, the commissioners having preliminarily stated that it was a Japanese custom to speak slowly. They were evidently very anxious to proceed with deliberation, and weigh every word with the exactness of cautious diplomatists.

The chief commissioner now handed the Commodore a long roll of paper, which proved to be an answer to the President's letter, delivered on the previous visit at Gori-hama in July.

[Here follows a translation of that answer, printed below]

The Commodore having returned the document, requesting it should be signed by the high commissioner, and delivered to him next day, entered at once upon the subject which was uppermost in his mind, the negotiation of a treaty. He remarked that it would be better for the two nations that a treaty similar to the one between the United States and China should be made. He had been sent, he continued, by his government to make a treaty, and if he did not succeed, the United States would probably send more ships to make one; but he hoped that everything would be soon settled in an amicable manner, and that he would be enabled to send two of his ships, as he desired, to prevent others from coming. A copy of the Chinese treaty, written in English, Chinese, and Dutch, accompanied by two notes from the Commodore, and a letter in answer to one sent by the high commissioner from Uraga, were now handed to the Japanese, when they asked for time to have the documents translated into their own language.

The order of the proceedings on March 8 after the preliminaries, and the course of the discussion, are reported by Williams somewhat differently than in the "notes" of Commodore Perry and in the Narrative; the portion, not heretofore quoted, of the journal for the day follows (Williams, 125–27):

Soon after the confectionery and tea had been served to all, the commissioners returned, and invited Perry and his suite to enter a side room where Commissioner

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Lin [1] had us all seated and, after a few compliments, brought out the Emperor's answer to Fillmore's letter, written on a few pages of coarse paper. It acceded to the demands for good usage of shipwrecked sailors, and supplies of provisions for ships needing them, and offered a port for trade, to be chosen by us, and a supply of coal to be there delivered as soon as we needed it. Five years were needed to complete their arrangements for trade at this port, but traffic in articles could be commenced soon.

A Dutch translation was handed in, but the original was not given at this time, as they had no signed copy with them. Our draft of a treaty and explanatory letter were handed to them, and the desirableness of their forming a treaty with us, which would fix our international relations with them on a clear basis, fully dilated on. Notes of several things to be considered were then handed to them, and they are to reply in writing. Moriyama was on the floor, shuffling from one side to the other, while these men regarded him with undisturbed countenances and spoke to him in a very low voice. Yezaimon, Kaheyõye and Tatsnoske were in the room, the latter crouching on hands and knees. What respect can a man have for himself in such a position?

The chief commissioner was an unintellectual looking man, dressed plainly in dark silk. The second is a gross, sleepy looking man, as much unlike a prince as if he was a chimney-sweeper, his next in rank taking the shine off all of them by his green trowsers and their gilt emblazonry, he having his coat-of-arms worked on each calf so as to be conspicuous. It was this man who met the party at Uraga, appearing there even brighter than on this occasion. The fourth and fifth commissioners said almost nothing, and did not present anything attractive; all of them doubtless looked at us as carefully as we at them, regarding us with more interest, doubtless, as they had more at stake.

We were entertained by the two princes while the others went out to look at the papers. Two trays of fish differently dressed, surrounded with boiled seaweed, walnuts, carrots shredded fine, and eggs, were served, with saki, tea, soy and vinegar. As little salt was used as by the Lewchewan cooks, yet the viands were not badly tasted, and I had a fresh supply of the kurumi or walnut seeds, which tasted very pleasantly. A decanter and glasses were brought in, with Madeira wine, which were obtained doubtless of the Dutch. No great outlay was made for to-day's entertainment, if this was the criterion; but it evidenced good feeling on the part of the Japanese, and was a vast advance on last summer's meeting.

When the other commissioners returned they were all invited to dinner, and accepted the invitation finally, as soon as the intimation was given that the machinery would be set agoing for them. The case of the death on board of the "Mississippi" was then introduced, and a request made that a place be set apart for interment. First, they wished to know whether the deceased was an officer; then they requested that we take the body to Uraga, whence they would take it to the burial ground at Nagasaki. This being denied and Perry proposing Natsusima, they raised scruples respecting the proprietary of the land, and, after a deal of backing and filling agreed to let the body be buried ashore to-morrow, they sending guides to point out the location. All this discussion took up three quarters of an hour, and allowed the officers outside to see a good deal of the neighborhood, some of them walking a mile or more.

Nothing could be obtained from the commissioners respecting leave to go ashore, and the replies to this and other points in the notes were to be given soon. I have given the leading points in this interview, but the slowness of the intercommunication, through Dutch too, prolonged it to weariness. While we were inside, the crowd of Japanese outside entertained itself with the guard, the officers and the music, and got on very well together. There were about seven hundred foreigners on shore and lying off. After looking at the long shed for the presents, which required a new roof before it would be safe, Perry and his suite went off. When he landed salutes were fired in honor of the Emperor and Commissioner Lin, a mark of respect the latter seemed to understand; these were fired by the boats.

Escorts of Japanese soldiers, crossbow-men, matchlock-men and servants were standing around the building, but the crowd was never in the way, and both

[1] Hayashi.

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parties mingled freely with each other. The meeting passed off pleasantly in every respect, and towards evening a dozen boxes of oranges and casks of spirits were sent off to the flagship for distribution.

Concerning a burial place at Yokohama Commodore Perry's "notes" continue with these paragraphs:

As it would happen, a Marine belonging to the Mississippi had died two days before this conference and the very first matter to be discussed was the suitable interment of the body. I had apprehended much difficulty upon this point, and had in my own mind determined if the Japanese persisted in forbiding the interment within either of their numerous burial places to have effected the object let what might occur, upon the small Island, called in our Charts "Webster Island", and lying convenient to the "American Anchorage". I was pretty well satisfied that once the body was in the ground it would not be disturbed, and as others of the Squadron might die during our stay, it would be a very appropriate place of interment for all, and I was moreover anxious for special reasons to acquire an interest in this Island to subserve some ulterior objects.

The proposition seemed to perplex the Japanese Commissioners, and after some consultation they retired to discuss the question alone, and on leaving requested that in their absence we might partake of a few Japanese dishes.

I observed that we should be most happy to do so, but it would be more consonant to our notions of hospitality if the Commissioners were to join us, as the breaking of bread together was amongst many Nations considered an evidence of friendship; they replied that they were unacquainted with foreign customs but would cheerfully join us, upon this they all retired but shortly after the second and third in rank of the number returned and the collation was served, and all went off in apparent kindness and good nature.

It was not long before the entire board was again in Session and a written reply to my request respecting the interment presented by the Chief Commissioner, and to the purport that as a temple had been set apart at Nangasaki for the interment of Strangers it would be necessary that I should send the body to Uraga, whence at a convenient season it might be conveyed in a Japanese Junk to the former named place. To this I objected, remarking that undisturbed resting places for the dead were granted by all Nations, and then proposed to send boats and inter the body at "Webster Island", but to this they evinced strong objections, and after considerable discussion amongst themselves finally consented to allow the interment to take place at Yoku-hama, at a spot adjoining one of the temples, and in view of the Ships, and they observed that as the novelty of the scene might attract an inconvenient crowd, the authorities would send on board the Mississippi in the morning an officer to accompany the funeral party.

One paragraph from Narrative, I, 353, describing the close of the conference of March 8, is here inserted:

The Commodore now prepared to depart, having first stated that he would be happy to see the Japanese dignitaries on board his vessel as soon as the weather should become warmer. They expressed courteously the pleasure they would have in accepting the invitation, and, bowing, retired. The subordinate American officers had been entertained with refreshments in the large outer hall during the conference, and amused with the rude efforts of Japanese artists, who had been sent from Yedo, at delineating their portraits. The Commodore now passed out, followed by his suite and the procession of officers as before, and marching down, to the music of the bands, between the files of marines on either side, embarked in his barge and pulled for the ship. The other boats soon followed, filled with the numerous officers, sailors, marines, and others, who had shared in the ceremonies of the day.

Commodore Perry's "notes" continue with these two paragraphs referring to occurrences of March 9:

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Accordingly on the following day one of the Interpreters made his appearance, and the corpse was taken on shore in the usual manner and placed in a grave near to a Japanese Temple, with all religious ceremony, conformably to the forms of the Episcopal Church;—Since which a neat enclosure of bamboo has been put up by the Japanese authorities.

The day after the conference a formal reply to the letter of the President was sent to me together with a Dutch translation.—An English translation of which is appended, marked E. as also a Copy of my reply, marked F.

The two papers just mentioned are here inserted, the first in both Netherlandish and English from a print of the Japan Expedition Press, dated on the *Powhatan* at Shimoda May 1, 1854 (Naval Records and Library, in volume 2 of those containing the despatches of Commodore Perry, heretofore cited); the Netherlandish is doubtless the rendering furnished by the Japanese Plenipotentiaries; for the English translation first forwarded by Commodore Perry, see serial 751, pp. 137–38:

ANTWOORD OP DEN BRIEF VAN DEN PRESIDENT, AAN DEN KEIZER VAN JAPAN DOOR DE KEIZERLYKE GEVOLMAGTIGDEN.

De terugkomst van uwe Excellentie in dit Ryk als Afgezant van de Vereenigde Staten is tegemoet gezien geworden uit den brief van Zyne Majesteit den President, welken uwe Excellentie verleden jaar voor Zyne Majesteit den Keizer van Japan hebt afgegeven.

Het is onmogelyk om op eens voldoende antwoorden te geven op al de voorstellen van uwe Regering, daar zulks op de stelligste wyze door de wetten van ons Keizerlyk Huis verboden wordt, doch blindeling aan de oude wetten gehecht te blyven schynt te zyn het miskennen van den geest dezer eeuw, en liever willen wy toegeven aan noodzakelykheid.

Zyne Majesteit de vorige Keizer was ziek toen uwe Excellentie verleden jaar dit Ryk bezocht, en is sints overleden. Zyne Majesteit de regerende Keizer heeft nu den troon beklommen; de vele bemoeyingen tengevolge van deze verandering zyn nog niet afgeloopen, en er is geen tyd geweest om andere zaken grondig te behandelen; buitendien by troonsopvolging belooft de Keizer aan de Prinsen en hooge beambten om de wetten des Ryks stiptelyk te handhaven, en daarom is het duidelyk dat nu geene verandering in de oude wetten kan worden tot stand gebragt.

Verleden herfst by het vertrek van het Nederlandsche schip werd het opperhoofd van den Nederlansche

TRANSLATION OF THE ANSWER TO THE PRESIDENT'S LETTER TO THE EMPEROR OF JAPAN, THROUGH THE IMPERIAL COMMISSIONERS.

The return of Your Excellency as Ambassador from the United States to this Empire has been expected, according to the letter of His Majesty the President, which letter Your Excellency delivered last year to His Majesty the Emperor of Japan. It is quite impossible to give satisfactory answers at once to all the proposals of your Government, since those points are most positively forbidden by the laws of our Imperial House; but for us to continue bigotedly attached to the ancient laws seems to misunderstand the spirit of the age, and we wish rather to conform to what necessity requires.

At the visit of Your Excellency last year, His Majesty, the former Emperor, was sick, and is now dead. Since His Majesty the present Emperor has ascended the Throne, the many occupations demanding his care in consequence thereof are not yet finished, and there is no time to settle other business thoroughly; moreover, His Majesty the new Emperor, at his accession to the Throne, promises to the princes and high officers of the Empire to observe the laws. It is therefore evident that he cannot now bring about any alteration in the ancient laws.

Last autumn at the departure of the Dutch ship, the Superintendent of the Dutch trade in Japan was requested to

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handel verzocht om van deze gebeurtenis kennis te geven aad uwe Regering, en een schriftelyk antwoord is ontvangen geworden.

Niet lang geleden is te Nagasaki een Russische Afgezant aangekomen met eene wensch van zyne Regering; deze afgezant is weder vertrokken omdat geen antwoord kon gegeven worden, van welke Natie ook dergelyke wenschen mogten worden voorgedragen.

Evenwel inziende de noodzakelykheid geven wy toe aan de voorztellen van uwe regering betreffende steenkool, hout, water, levensbehoeften en het verleenen van hulp aan schepen en menschen in nood. Als nu uwe Excellentie een haven uitkiest zal die haven worden gereedgemaakt; naar onze berekening zal dit gereedmaken in vyf jaren kunnen plaats hebben, ondertusschen kan met de aflevering van steenkool worden aangevangen met het begin van het volgende Japansche jaar (den 10den February, 1855).[1]

Wy verzocken uwe Excellentie ons te voorzien met eene berekenening betreffende steenkool, aan hetwelk gevolg zalworden gegeven indien na overweging zulks niet in tegenstryd met onse wetten wordt bevonden. Wat verstaat gy door levensbehoeften? hoe veel steenkool?

Ten slotte alles wat voor schepen nodig kan zyn en tot de voortbrengselen van dit Ryk behoort zal kunnen verkregen worden, de pryzen door Koerakawa Kahei en Moriyama Einoske te worden bepaald als het vorenge melde punt is vastgesteld kan het verdrag gesloten, en by de volgende Zamenkomst onderteekend worden.

inform your Government of this event, and a reply in writing has been received.

At Nagasaki the Russian Ambassador recently arrived to communicate a wish of his Government; he has since left that place because no answer would be given to any nation that might communicate similar wishes.

However, we admit the urgency and shall entirely comply with the proposals of your Government concerning coal, wood, water, provisions, and the saving of ships and their crews in distress. After being informed which harbor Your Excellency has selected, that harbor shall be prepared, and this preparation, it is estimated, will take about five years. Meanwhile a commencement can be made with the coal at Nagasaki by the beginning of the next Japanese year (10th of February, 1855).[1]

Having no precedent with respect to coal, we request Your Excellency to furnish us with an estimate, and upon due consideration this will be complied with, if not in opposition to our laws. What do you understand by provisions? And how much coal?

Finally, anything ships may be in want of, that can be furnished from the productions of this Empire, shall be supplied; the prices of merchandise and articles of barter to be fixed by Kurokawa Kahei and Moriyama Einosuke. After settling the point before mentioned, the treaty can be concluded and signed at the next interview.

Seal attached by order of the Imperial Commissioners.

[Seal] MORIYAMA EINOSUKE

Kaei, 7th year, 1st moon, 26th day (February 23, 1854).

U.S. FLAG SHIP POWHATAN

At anchor off the Town of Yoku-hama, Yedo Bay, March 10th 1854.

To His Highness, HAYASHI, DAIGAKU-NO-KAMI.

&c. &c. &c.

YOUR HIGHNESS. In reply to the communication of Your Highness which was brought to me yesterday by Kura-Kawa Kahei, and the Chief Interpreter Moriyama Yenoski, I hasten to remark that it has given me the greatest satisfaction to learn from its contents that the Imperial Government of Japan has at last awakened to a conviction of the necessity of so altering its policy with respect to Foreign Nations as to consent to an interchange of friendly intercourse with the United States.

[1] Correctly February 17, 1855.

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Though the propositions set forth in the communication of Your Highness furnish strong evidence of the enlightened Spirit with which the Imperial Commissioners are disposed to meet the suggestions which I have had the honor to submit, they fall far short of my anticipations, and I do not hesitate to say that they would not satisfy the views of the President.

I cheerfully accede to those of the propositions of Your Highness which offer to guarantee kind treatment to such Vessels of the United States as may hereafter visit the ports of Japan or be wrecked upon its Coasts, with protection and suitable hospitality to the people who may belong to them.

Also that provisions and other supplies shall be furnished to them and payment received for the same.

Also that American Steamers shall be supplied with reasonable quantities of Coal and at fair and equitable prices.

These are all very well so far as they go and can be incorporated in the Treaty which I shall expect to make, but my instructions require me to look for an intercourse of a more enlarged and liberal character, and I feel assured that the Imperial Government, in consideration of the spirit of the age and with full knowledge of my strong desire to conduct my mission in peace and friendship, will no longer hesitate to enter with cordiality into a Treaty that will be mutually honorable and advantageous to both Nations.

The convenience of the immense and growing Commerce of the United States in these Seas will require certainly as many ports of resort in Japan as are specified in the Treaty with China, and these must be free from any restrictions not recognized by the usages of free and independent Nations.

In a word I again earnestly urge upon Your Highness the policy of fixing upon some written compact, that will be binding as well upon the Citizens of the United States as the Subjects of Japan.

It would be needless in me again to express the Sincerest desire of my heart to bring these negotiations to an amicable and satisfactory termination, nor will I again allude to the importance of such an issue, important as well to save time as to prevent the necessity of sending from America more ships and men and possibly with instructions of more stringent import.

I have the power and the wish to meet the Imperial Commissioners in all good faith, believing that there can be no more favorable time than the present to settle all the questions under consideration in such manner as will bring about a good understanding between two Nations whose Geographical positions lying in comparative proximity would seem to enjoin as a measure of wise foresight a mutual interchange of those acts of kindness and good will which will serve to cement the friendship happily commenced and to endure I trust for many Years.

With the most profound respect.

(Signed) M. C. PERRY.

Comm^r. in Chief. U.S. Naval Forces East India, China & Japan Seas.
And Special Ambassador to Japan.

The next two paragraphs of Commodore Perry's "notes" read as follows:

It will be seen that the Imperial Government is prepared to concede much more than was anticipated by many, but entertaining the opinion that something still more advantageous might be gained, I thought it good policy to hold out for a specific treaty.

In delivering the reply to the letter of the President, they stated that the Commissioners would be ready for receiving the presents on Monday the 13th;—accordingly they were landed with much ceremony by a detachment of twenty four boats, in Command of Captain Abbot, and safely placed in a building adjoining the Conference House; and Engineers and operatives were sent from the Ships to put together and arrange the various articles preparatory to the work of instructing the Japanese in their several uses.[1]

[1] Regarding the American gifts and their delivery, see Narrative, I, 356–58, 372; but the formal presentation thereof took place on March 13 and not on March 24 (cf. *ibid.*, 357 and 372); see Williams, 134, 137, 148; and for a list, arranged by recipients, see *ibid.*, 131–34.

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For March 9 the journal of Dr. Williams includes these entries (Williams, 127–29):

Moriyama and Kaheyōye, the deputies from the commissioners, came about half past one, P.M., to deliver a certified copy of the answer read to us yesterday, and a Dutch translation. It is a mean looking style to return the answer to the magnificent boxes in which Fillmore's was handed to them, though this matters little to the contents. These papers were handed to the Commodore, and a short time allowed for dinner, during which some good daguerreotypes of the visitors were taken, and then we went off to the "Mississippi" to consult on business. The deputies had Hiraiyama Kenzhirō for their advisor and secretary, but yesterday he acted an equal part with Kaheyōye, and must hold high office. The chief matters settled were: the landing of the presents on Monday; the best way of procuring provisions through a purveyor who was to bring them all to one ship, where they would be paid for, weighing coin against coin, equal weight being equal value; and the nature of the presents we wish in exchange for ours. We talked about ports to be opened; the place whence the cannel coal they had brought us was obtained; the desirableness and objections to our going ashore to walk; and need there was on our part for patience in this negotiation which to them was so novel and heretofore so opposed to their laws. The princes and commissioners are unacquainted with us and our customs, and much of our success depends on the first steps.

While still in session, the funeral boats returned, Yezaimon coming back with them. The grave was dug near the burial ground of Yokohama, and, after Mr. Jones had gone through his services, a Buddhist priest who had joined the procession, all shaven and shorn, and in a yellow surplice of a fine quality, went through his services, having brought his bell and candle, *saki*, incense sticks and all his furniture to join in this Christian burial. His ritual was much the same as in China, and all present, including over two thousand spectators, regarded it all in quiet interest, somewhat doubting, perhaps, what they would see next. Thus did the United States marine, Williams, occupy his narrow bed within fifteen miles of Yedo, where Gongiu-sama declared once that no Christian should ever come; yea, that even the God of the Christians should die, if he came. Thus are old things passing away in Japan. Mr. Jones thinks he has done a great achievement.

NAMES OF THE SIX MEMBERS OF THE IMPERIAL COUNCIL AND THE COMMISSIONERS APPOINTED TO MEET COMMODORE PERRY AT YOKOHAMA.

松崎滿太郎	Matsusaki Michitarō.
鵜殿民部少輔	Udono, Mimbu Shiyoyu, assistant in the Board of Population or Revenues.
伊澤美作守	Izawa, prince of Mimasaki, in Sanyuto, w. of Miaco.
井戸對馬守	Ido, Tsus-sima no kami, prince of islands near Corea.
林大學頭	Hayashi, dai gaku no kami, one of the high councillors.
內藤紀伊守	Naïto, prince of Ki, in Nankaitu.
久世太和守	Kuzhei, prince of Yamato, near Idzumi.
松平伊賀守	Matsudaïra, Iga's prince; east of Kaga.
松平和泉守	Matsudaïra, prince of Idzumi, opposite Ohosaka city.
牧野備前守	Makino, the prince of Bizen in Sanyuto.
阿部伊勢守	Abe, the prince of Ishi, in the division of Tokaido.

Discussions of March 9 and 11 are thus reported in Narrative, I, 355–56:

On the same day [March 9] the prefect, Kura-Kawa-Kahei, and the chief interpreter, Yenoske, came on board the Powhatan with a copy of the Imperial reply to the President's letter, duly certified and signed by the four commissioners.

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The two Japanese officials subsequently repaired to the Mississippi, where they conferred for some time with Captain Adams. They appointed the Monday following (March 13th) for the reception of the presents, and it was arranged that those persons who had the supervision of the telegraph, the Daguerreotype apparatus, and steam engine, should land on the previous Saturday, to arrange a place for their suitable exhibition. The Japanese stated that two of the commissioners would be in attendance, with a scribe, to receive and record the various presents, and the names of the persons for whom they were intended. Upon Captain Adams saying that all the presents received by the officers of the United States were, by law, the property of the government, Yenoske remarked that a similar law existed in Japan. To the inquiry of the Japanese as to when the Commodore's reply to the answer to the President's letter would be ready, it was promised for the subsequent Saturday.

Captain Adams now asked what ports the commissioners had selected for the trade of the Americans, and where they were, and remarked that five years, the time appointed for the opening of them, was deemed by the Commodore much too long, and that he would never submit to having a place so restricted as Dezima for the use of the Americans. The prefect waived all immediate consideration of the subject, saying that it was one upon which the commissioners would negotiate and deliberate, and that it would necessarily require time. Yenoske, the interpreter, was then told that he could forward the purposes of the expedition, since he was familiar with them; he promised to do so to the utmost of his power, but he declined, although a map was placed before him, to name the ports for American intercourse, saying, as he refused, that the whole matter was so new, and so opposed to the laws of the Empire, that time would be required to bring matters to such an issue. In regard to the question of going ashore, which had been submitted to the commissioners, Captain Adams asked for some explicit reply, stating that the surveying party, which was at the time at work in the bay, would require to plant signals along the shore, but would not go into the interior. To this the prefect answered that the views of the commissioners had not been yet fully matured, but seemed to concur in the necessity of the signals, if the Commodore had so ordered it. He, however, expressed his fear of trouble and confusion, if the officers, engaged in their duty, should enter the villages, and hoped they would go down the bay, and not northward. The subject of supplies was next spoken of, and the question of payment seemed to be conceded by the Japanese, who proposed that as soon as a port was selected, certain compradors should be appointed for the sale of articles of every kind, but in the meantime, they said a single person would be chosen, whose duty it would be to supply what was necessary, and receive in payment the American coin, to be estimated weight for weight with the Japanese money. They would prefer, they said, that Nagasaki should be the place for such transactions, but granted the necessity of carrying them on for the present where they were. The hours for the future meetings being settled at from eleven o'clock to one, instead of the previous irregular mode, the Japanese took their departure.

On the next day (March 11) a short conference was held by Captain Adams with the same Japanese officials in the treaty house on shore. He also bore a communication of the date of the 10th of March from the Commodore, addressed to the commissioners, in which the answer to the President's letter was acknowledged. The Commodore, while he expressed his satisfaction at the determination of the Japanese government to alter its policy in regard to foreign governments, at the same time stated that the concessions proposed were not enough, and that a written compact or treaty, with wider provisions, was essential. The chief points talked of were, the answer to the Commodore's notes in reference to the proposed treaty, and the privilege of going ashore. In regard to the former, they stated that a reply was not yet prepared; but as for the latter, the interpreter remarked, unofficially, that there would be no objection to the Commodore and his officers going ashore; but that if the permission should be general, difficulty with the people might ensue. Some general conversation followed in regard to the necessity of dispatch in the negotiations, Captain Adams stating that it was the Commodore's intention to send one of his ships to the United States, in the course of a week or so, to inform the government at home of the progress of the negotiations, that it might know whether it was necessary to send more

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vessels or not. The Japanese evinced some uneasiness at this statement, and asked, "Whether the Americans are friendly?" "Certainly we are," was the answer, and the conference closed in the most amicable manner.

Commodore Perry's "notes" continue for March 13 with this reference to arrangements for another conference:

On the 13th, the day the presents were landed, I sent a message to the Commissioners requesting them to meet me at the Conference house on the 15th [Wednesday] to discuss the several articles of the treaty which they had submitted for my approval and signature.[1] They replied that they should be much employed until Thursday, and suggested that day as more convenient, provided it was fair, the messenger remarking that the Japanese did not like to expose themselves to bad weather.

Although it is one of the annexes to Commodore Perry's account, this translation of a Japanese note of March 15 is not therein mentioned; it is said to have been delivered on March 16 (Narrative, I, 361); but the Japanese draft of proposals, in seven points or articles, which was with it, was in the hands of Dr. Williams on March 15 (Williams, 137).

Note from the Japanese Commissioners to Commodore Perry.

At our personal interview on the 8th you presented us a paper in which the President's views were expressed; and on the 11th we received a reply to our letter in which the same views were given as at the interview in relation to the commerce your Country now has with China, both of which we have carefully examined, and learn that you wish to ascertain whether we are ready to adopt the same that the Chinese have. The burden of that which you presented on the 8th is similar to that which was sought in the President's letter, and you gave it to learn whether we would adopt it or not; in our letter it was plainly stated that our Emperor had but lately acceeded to his throne, and all the numerous affairs of government required to be quietly settled, and that he had no leisure for extraneous negotiations. Consequently, he last autumn sent through the Superintendent of the Dutch Shipping to make this known to you, for you to communicate it to the United States.

Among those points which you now propose for adoption the two items of extending succor and protection to the distressed and wrecked vessels on our coasts, and of furnishing coal to passing ships, and supplying provisions and other necessaries to those who may be in need of them, are founded in reason and ought to be granted without hesitation. But as to opening a trade such as is now carried on with China by your Country, we certainly cannot yet bring it about. The feelings and manners of our people are very unlike those of outer nations, and it will be exceedingly difficult even if you wish it, to immediately change the old regulations for those of other countries. Moreover the Chinese have long had intercourse with Western nations, while we have had dealings at Nangasaki with only the people of Holland and China; beside them it mattered not for us to trade with those of any other land, and this has made our exchange of commodities very small.

The Ships of your Country must therefore begin their trade at Nangasaki during the first moon of our next year, where they can procure fuel, Water, Coal and other things; but as our ideas of things and what we each like, are still very dissimilar, as are also our notions of the prices or worth of things. This makes it indispensable that we both first make a mutual trial and examination; and then after five years we can open another port for trade, which will be convenient for your Ships when passing.

[1] As to these treaty articles, see below.

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The points of the Treaty you have now presented for our deliberation, and this [1] now given to you can be retained by each as evidence of our separate views.
Kayei. 7th year. 2d moon. 17th day. (March 15th, 1854.)

(Signed) HAYASHI.
" IDO.
" IZAWA.
" UDONO.

The "notes" of Commodore Perry continue with this account of a conference on March 17:

It stormed on Thursday and consequently the meeting did not take place until the following day, the 17th. The Commissioners arriving about noon from Kanaga-wa, in a magnificent barge or rather galley covered with banners.

On landing I was conducted immediately to the private room set apart for the discussion, and we at once proceeded to business.[2] A paper written in Dutch was now presented, similar in purport to one which had been previously [3] sent me in the Chinese language; for the latter version Mr Williams had made an English translation,[4] which, being compared with the Dutch Copy, may be read, with the replies respectively submitted by me, as follows;

Propositions of Japanese Commissioners with replies of Commodore Perry.

1st Japanese Proposition.

From the next first month, Wood, Water, provisions, coal and other things, the productions of this Country that American Ships may need, can be had at Nagasaki, and after Five years from this a port in another principality shall be opened for Ships to go to.

NOTE. Those Articles to be charged at the same prices that are charged to the Dutch and Chinese, and to be paid in Gold and Silver Coin.

Commodore Perry's Reply.

Agreed to, but one or more ports must be substituted for Nagasaki, as that is out of the route of American Commerce; and the time for the opening of the Ports to be agreed upon, must be immediate or within a space of Sixty days. The manner of paying for Articles received shall be arranged by treaty.

2nd Japanese Proposition.

Upon whatever part of the Coast people may be shipwrecked, those people and their property shall be sent to Nagasaki by Sea.

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[1] I.e., the Japanese proposals, two translations of which are printed below.

[2] Compare the account of this meeting of March 17, 1854, in Diary of an Official of the Bakufu, 107–10.

[3] The date is March 16 according to Narrative, I, 361–62; but Commodore Perry wrote above as if the proposals had been received on March 13; certainly March 15 is the latest possible day, as the translation from the Chinese was made that evening (Williams, 137); the date given in Diary of an Official of the Bakufu, 107, is March 15.

[4] This translation, as well as the Chinese from which it was made, is available (Williams, 137–39); its seven articles are here printed; the sense of Articles 4, 6, and 7 is quite different from that of the rendering given by Commodore Perry; some comments on the variant readings of Articles 6 and 7 will be found in the editorial notes to Document 166:

ART. I.—When ships of the United States come to Nagasaki they shall be supplied with wood, water, provisions, and coal; and if they lack anything else for their necessities it shall be supplied them as far as we have it. The time for this going into effect is during the first month of next year; after five years we will open another port for their accommodation.

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NOTE. When after five years shall have expired, and another harbor shall be opened, those Shipwrecked men will be sent either there or to Nagasaki, as may be most convenient.

Commodore Perry's Reply.

Agreed to, excepting as to the Port to which the Shipwrecked men are to be carried.

3d Japanese Proposition.

It being impossible for us to ascertain who are Pirates and who are not, such men shall not be allowed to walk about where ever they please.

Commodore Perry's Reply.

Shipwrecked men and others who may resort to the ports of Japan are not to be confined, and shall enjoy all the freedom granted to Japanese, and be subject to no further restraints. They shall however be held amenable to just laws or such as may be agreed upon by treaty.

It is altogether inconsistent with justice that persons thrown by the providence of God upon the shores of a friendly Nation should be looked upon and treated as pirates before any proof shall be given of their being so, and the continuance of the treatment which has hitherto been visited upon strangers will no longer be tolerated by the Government of the United States so far as Americans are concerned.

4th Japanese Proposition.

At Nagasaki they shall have no intercourse with the Dutch and Chinese.[1]

Commodore Perry's Reply.

The Americans will never submit to the restrictions which have been imposed upon the Dutch and Chinese, and any further allusion to such restraints will be considered offensive.

Note.—We may mention that the prices of these things shall be according to those paid by the Dutch and Chinese, and that they shall be exchanged for foreign gold and silver coin and for no other article.

ART. II.—Wherever ships of the United States may be thrown or wrecked on our coasts, our vessels will assist them and carry them to Nagasaki and hand them over to their countrymen there; whatever articles the shipwrecked men may have preserved shall likewise be restored. *Note.*—After the five years, when a new port is opened, that which has been saved shall be taken to the new port or to Nagasaki, as is most convenient.

ART. III.—As it is not easy to ascertain certainly whether those who may be thrown upon our shores are good men or are pirates, they are not to be allowed to go walking about at those places as they please.

ART. IV.—The Dutch and Chinese who dwell at Nagasaki are under old regulations which cannot suddenly be altered; therefore, all Americans resorting there cannot be permitted to go ashore as they please.

ART. V.—After the other port is opened, if there be any other sort of articles wanted or any business which requires to be arranged, there shall be careful deliberation between the parties in order to settle them.

ART. VI.—As Loochoo is a distant frontier dependency, the matter of opening a port there cannot at this time be caviled at by us.

ART. VII.—As Matsumai is a distant border place likewise and is ruled by its hereditary prince, the matter of making a port is also hard to cavil at this time. When the ships of the United States come to Nagasaki next spring, this point can be leisurely discussed and arranged.

[1] This is an obviously incomplete and erroneous version of the fourth proposition; perhaps some words were omitted by a scrivener; the reply of Perry to this shows the Japanese proposal to have been as it appears in Article 4 of the Williams version (see the preceding footnote).

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5th Japanese Proposition.

After the other Port is opened, if there be any other sort of Articles wanted, or business which requires to be arranged there shall be careful deliberation between the parties in order to settle them.

Commodore Perry's Reply.

Agreed to, so far as it applies to ports other than Nagasaki.

6th Japanese Proposition

Lew-Chew is a very distant Country, and the opening of its harbor cannot be discussed by us.

Commodore Perry's Reply.

As there can be no good reason why the Americans should not communicate freely with Lew-Chew, this point is insisted on.

7th Japanese Proposition.

Matsmai is also a very distant Country and belongs to its Prince; this cannot be settled now, but a definite answer on this subject shall be given when the ships are expected next spring.

Commodore Perry's Reply.

The same with respect to the Port of Matsmai, for our Whaling Ships, Steamers, and other vessels.

These propositions and replies were consecutively discussed, the Commissioners interposing all possible difficulties, contending that the laws of the Empire were of such character as positively forbade the concessions I demanded, and remarking that Nagasaki was set apart for the admission of strangers, that the inhabitants and authorities of that City had been trained to enforce the laws with respect to foreigners, and if the Americans were to have another Port assigned to them, five years would be required to make similar preparations.

I replied that that was one of my reasons for objecting to this Port, that its inhabitants and authorities having been so long accustomed to the servility of foreigners would doubtless exact more from the Americans than they would be inclined to submit to, and serious consequences would follow, and moreover it should be well understood that my Countrymen visiting Japan must be free from all those oppressive laws which have hitherto been enforced upon strangers; in a word I would not think of accepting Nagasaki as one of the Ports.

I told them that I should expect in the course of time five ports to be opened to the American Flag, but at present would be content with three, as follows; one in the Island of Niphon, and suggested either Uraga or Kago-sima; [1] another in Jesso (Matsmai); [2] and a third in Lew-Chew (Napa-Keang); and would defer all discussion in respect to the other two to some future time.

To this after many evasions they answered, that as I positively refused to accept Nagasaki, and having themselves objections to the selection of Uraga, they proposed the port of Simodi in the Principality of Idzu as one in every way suitable and convenient; remarking at the same time that Lew-Chew was a distant dependency over which the Crown had limited control and consequently they could not entertain the proposition. That Matsmai also stood very much in the same relation to the Imperial Government.

Notwithstanding all these objections I still persisted in my demands, and seeing me determined to hold out, they proposed to retire to another room to consult upon the matter.

[1] The port of Kagoshima, on the bay of the same name, is not in Nippon, but on the southern coast of the island of Kyushu.

[2] Matsmai (Matsumai), on the island of Hokkaido (Yezo), is now Fukuyama.

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After an absence of an hour the whole board again convened in the Council room, and gave as the result of their deliberations that longer time would be required to decide upon the expediency of opening the port of Matsmai.

They further remarked that it was not in the power of the Crown to grant the required privilege of this Port without consulting the Prince under whose hereditary right it was governed; that to do this would require a year, at the expiration of which time they would be prepared to give a reply. I told them I could not leave Japan without a reply of some sort; that if the Prince to whom they referred was an independent Sovereign I would go to Matsmai and negotiate with him. Finally the interview ended by their saying that they would give me a definite answer on Thursday, the 23d.

Before adjourning however, it was agreed that one or more vessels of the Squadron should be despatched to the Port of Simodi, to be met by a Japanese officer of rank for the purpose of examining the harbor in view of determining its fitness for the required purposes, it being clearly understood that if it did not answer my expectations in all respects, I should insist on another somewhere in the Southern part of Niphon.

The position of this Port as a stopping place for Steamers and other vessels lying between California and China, and for Whaling Ships cruising in this part of the Japan Seas could not be more desirable, lying as it does, just within Cape Idzu or Nogatsuro, with a clear and open navigation towards the Sea; it is easy of access, and vessels would be taken but a short distance from their route in resorting to it. The Commissioners represent it as safe, commodious and convenient for obtaining such supplies as the Country can furnish, which are limited, owing to the remarkable abstemiousness of the Japanese in the use of Animal food.

However I may expect on the return of the vessels which are to be despatched to examine the Port, an account sufficiently accurate to enable me to decide whether or not to accept it.

Matsmai is equally convenient in position for vessels passing more to the North and through the Straits of Sangar,[1] a vicinity much frequented by our Whalers, and it is a question whether in making the passage from San Francisco to Shanghae this may not be the nearest though certainly not the safest route.

The Department has already been fully informed by me of the superior advantage of securing a port in Lew-Chew.

Thus if I succeed in obtaining free access to the required Ports in Japan, we shall have three very convenient places of resort and refreshment for our Ships, nearly equidistant from each other and belonging to an Empire from which our Flag has hitherto been by law excluded.

Peel Island, one of the Bonin Group would make the fourth.

Before separating from the Commissioners I called their attention to the details of our conversation, remarking that my Secretary had taken full notes, and suggested that to prevent mistakes they should send me a written statement of their understanding of the verbal Agreements already arranged between us; to this proposition they at once assented, and accordingly the Chief Interpreter brought on board a paper of which the following is a translation, strongly indicative it would seem, of the good faith in which they intend to act.

> Japanese statement of Points agreed upon in the Interview of Commodore Perry with the Japanese Commissioners on the 17th of March 1854, appended, and marked G.[2]
>
> 1st The Citizens of the United States will not submit to degredations like those imposed upon the Dutch and Chinese in their Confinement at Nagasaki;—that place is not convenient for Ships to resort to, and does not answer the purpose.
>
> 2d Lew-Chew is a very distant Country, and a definite answer cannot be given.
>
> 3d Matsmai is a very distant place, and belongs to a Prince; this point cannot be settled now;—some time will be required for negotiation, until the

[1] Tsugaru Strait, between the islands of Honshu and Yezo (see Hydrographic Office Chart No. 3308, "Tsugaru Strait").

[2] Meaning that the paper is one of the appendices and also included here.

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first month of our next year; because the concurrence of the Central Government and of the Prince of that country are both necessary to effect a result; a negotiation of the Admiral with that Prince therefore would be to no purpose.

It was stated that an answer had better be given at once;—there was time enough to have that harbor opened by the abovementioned time; that it was not probable that in the first years that harbor would be resorted to by many ships, because some time would be required to communicate this decision to the Government and to have it generally known.

In consideration thereof it was agreed that a final answer should be given on the 23^{d} of March. (the 26th of the Japanese month.)

It being mentioned that besides Lew-Chew and Matsmai, more harbours in Niphon would be required; it was suggested that the harbor of Simodi could be opened for the Ships of the United States; and agreed that two Ships of the Squadron would sail on the 19th of March, to make a survey of that harbor; and further that some Japanese officers, to go by land, would arrive at that place on the 22^{d} Inst. and that the Captains of those ships would await the arrival of those officers before proceeding to survey, permit to land, &c.

That Shipwrecked men should meet with kind treatment and be *free* as in other Countries.

Agreement made upon due consideration.

In the journal of Williams is this rather summary report of the conference of March 17 (Williams, 140–41):

The Commodore left the ship to-day at one o'clock, and was received on shore by the marines and an escort, with music, and met the four commissioners in the house. The conference was altogether about three hours and a half, and conducted very pleasantly by the Japanese. The refusal to go to Nagasaki at all was met by the proposal of another port, when Perry mentioned Uraga, and they Shimoda, pointing it out on the map. This place has a fine harbor, and the Commodore agreed to it provisionally, saying that he must first examine its location, and would send the "Vandalia" and "Southampton" down there immediately to inspect and survey it. It was surveyed in 1849 by H.B.M. Brig "Mariner," but no chart of it is in the squadron. Matsmai is to be consulted about, and an answer will be given at the next interview on Thursday, while they can say nothing regarding Lewchew; this, therefore, seems to settle the question respecting the political independency of that island as of Yedo, whatever may be its relations with Satzuma. Sailors thrown ashore are not to be caged or confined, and to be restrained only after they are found guilty.

With reference to occurrences of March 22–24 the "notes" of Commodore Perry continue as follows:

Wednesday, March 22^{d} The Chief Interpreter visited the Powhatan to-day to inform me that owing to an error in referring to the Japanese Calendar, a mistake had been made as to the next day of meeting of the Commissioners, on which occasion I was to have had a definitive answer with respect to Matsmai; but inasmuch as such answer was promised on the 23^{d}, it would be sent on board; and the day succeeding, the Commissioners would be prepared to receive me on shore, and to present in due form the return presents from the Emperor to be sent to the United States.

The Chief Interpreter also informed me that the Commissioners had appointed Saturday the 25th to dine with me on board the Flag Ship in accordance with my invitation and request that they would fix a day. To this I suggested that as Saturday might prove stormy, and our Sabbath following, on which day I could not receive Company, I would prefer to have the honor of their presence on Monday, and it was so arranged.

Thursday, March 23^{d} The Chief Interpreter according to appointment came on board the Powhatan to-day accompanied by several other officials, and brought

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the reply of the Commissioners to my demand for the opening of a Port for the admission of American Vessels in the Straits of Sangar, Island of Matsmai or Yesso.

The document was written in the Japanese, Chinese and Dutch languages, and the one in Japanese signed by the four principal Commissioners. Here follows a translation from the Dutch, and another from the Chinese may be found in the Appendix, lettered H [here printed after the translation first mentioned].

"Ships of the United States of North America in want of provisions, "Wood and Water shall be supplied in the harbor of "Hakodade"* as has "been desired. Some time will be required to make preparations, inasmuch "as this harbor is very distant, consequently a commencement can be made "the 7th month of next year.[1] (the 17th of September 1855.) Kaei Sitsinen "Nigoats. (March 23d 1854.)

"Seals attached by order of the High Gentlemen."

(Signed) MORYAMA EINOSKE.

Chinese Translation.[2]

The Ships of your Country passing by, and in want of provisions, fuel & water, are permitted to come into the port of Hakodate and procure them; and we desire that this permission may be considered as granting what was requested by your government. But as this place is a distant spot, and much time will be requisite to prepare and settle everything, we therefore set the time for opening this port in the Seventh month. (Sept 6th to Oct 5th) of next year. (1855.) Kayei. 7th Year, 2d month. 25th day. (March 23d 1854.)

(Signed) HAYASHI.
" IDO.
" IZAWA.
" UDONO.

I informed the Interpreter that I would consent to the proposition of the Commissioners assigning this Port in the Island of Matsmai or Yesso, as a Northern port of resort for American Ships, provided on examination it proved to be equal to the favorable description he gave of it; and the time for throwing it open should be fixed at an earlier period, and further remarked that I would discuss these matters with the Commissioners at our next business interview.

Hakodade is situated at the Eastern entrance of the Straits of Sangar, in about 42° degrees North Latitude, and is in all respects convenient in Geographical position as a stopping place for our Whaling Ships cruising in that region; many of them passing annually through this channel into the Sea of Japan in pursuit of Whales.

Von Siebold states that Sixty-eight square rigged vessels were counted by the Japanese as passing Hakodade and Matsmai in one Year, nearly all it is presumed American, and not one daring to approach the Shore within Gun Shot.[3]

Golownin [4] also refers to it, as follows:

"The City of Hakodade, the second in magnitude on the Island, is situated "on its Southern Coast, on the declivity of a high circular hill, which rises "above the peninsula there formed: it is washed on the South by the Bay of "Sangar, [and] on the north and west by the Bay of Hakodade, which is very

*This is near to the City of Matsmai and has a better harbor MCP

[1] The seventh month of the next year by the Japanese calendar began on August 13 and ended on September 10, 1855 (see Bramsen, *op. cit.*, 124–25).

[2] That is, an English rendering of the Chinese. A very similar rendering, and the Chinese version also, are printed in Williams, 144.

[3] This statement has not been found in Von Siebold, Nippon, Archiv zur Beschreibung von Japan und dessen Neben- und Schutzländern.

[4] Golovnin, Memoirs of a Captivity in Japan, 2d ed., II, 322–23.

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"convenient for receiving a large fleet. The peninsula forms its junction on "the east by a narrow strip of land, so that there is at once a view of both the "open Sea and the low grounds."

The necessity of despatching the Susquehanna early in the morning to enable her to get clear of the Bay before dark, makes it proper that I should bring this paper to a close.

Details of all future transactions during the remainder of the stay of the Squadron in these Seas will be continued in the same form.

And I may remark in conclusion that in the short time we have been in this Bay, about five weeks, we have conciliated in a great degree the confidence of the authorities and people. Have established a Magnetic Telegraph upon the land, almost as perfect as any in the world, a mile in a direct line, by which words in English, Dutch and Japanese have already been conveyed; have laid down the entire Rail Road track [1] sent from the United States, and put the Steam Engine, Tender and Cars, in excellent practical operation, carrying round the circle many of the astonished natives. Have exhibited and explained the use of numerous useful inventions of our Country, especially implements of husbandry, and all without the occurrence of the slightest unfriendly act from either side.

Respectfully Submitted.

M, C, PERRY

U.S. FLAG SHIP POWHATAN OFF THE TOWN OF YOKU-HAMA.
Yedo Bay, Japan. March 23d 1854.

Continuation of Notes.

APRIL 1st 1854.

The Susquehanna sailed on the morning of the 24th for Macao, and was seen by the Vandalia to pass Simoda at 3 P.M.

On the same day a number of presents were sent on board for the President, for myself and other officers of the Squadron, all of which were carefully packed and marked, and put on board the Store Ship "Supply" to be sent to Washington conformably to the laws of the United States.[2]

During the visit to Yokohama for the delivery of the Japanese presents on March 24 there was, according to Diary of an Official of the Bakufu, 111, this important conversation between Perry and Hayashi, which is not elsewhere reported or mentioned:

Perry: "What port have you selected as the place where, as agreed the other day, fuel, water, provisions and coal will be supplied?"

The Lord Rector: "The ports we have selected for supplying fuel, water, provisions and coal, are Shimoda, in Idzu Province, in the south, and Hakodate, in the district of Matsumae, in the north. Hereafter, whenever your ships are in need of supplies, they may enter these two ports."

Perry: "I have heard that the harbor of Hakodate is very good, but I know nothing of Shimoda, and I can make no reply until the harbor of Shimoda has been examined. I wish to send some of my officers to look over that harbor."

The Lord Rector: "That most surely is a reasonable request. As we have no objection to your inspection of Shimoda, please send your men there as soon as possible."

Perry: "I shall, then, send two ships. You will, of course, allow my officers to go ashore at Shimoda, to examine the shore and to take soundings?"

The Lord Rector: "That is agreeable."

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[1] The telegraph and the railroad track were among the presents (see Narrative, I, 356–58, 372).

[2] Regarding these presents and their ceremonial delivery on shore, see Narrative, I, 367–69, 372, and Williams, 145–48.

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There was a conversation between Commodore Perry and Japanese officials on March 25; two reports thereof follow in seven paragraphs; the first six of these are from Narrative, I, 372–74, and the seventh from Williams, 148–49:

On the next day, (March 25,) Yenoske, accompanied by Kenzeiro, his fellow interpreter, came on board the Powhatan to acknowledge, formally, in behalf of the commissioners, their gratitude for the exhibition of the marines, the locomotive, and the telegraph, with all which they declared themselves highly delighted. Yenoske and his coadjutor were invited to seat themselves in the cabin of the Commodore, and, after some expressions of courtesy, which the Japanese officials were careful never to intermit, proposed to talk over some points in connexion with the projected treaty. The Commodore said he had no objections to the discussion of the matters informally; but he protested against considering the interpreters as the official representatives of the commissioners, with the latter of whom only, he declared, could he treat authoritatively.

Yenoske then commenced by stating that Hakodadi, which the commissioners had desired not to have opened before September, 1855, might be ready for American ships as early as March of that year, and added that Simoda, also, would be prepared by that date. The Commodore replied that, in regard to Hakodadi, although it was his intention to visit it during the summer, he was willing to accept it without a preliminary survey; but, as for Simoda, it must first be examined before it could be adopted. The Japanese now expressed the hope that the Commodore would not go to Hakodadi for a hundred days yet, as it was necessary to send to Nagasaki for an interpreter, who would be obliged to go to Yedo previous to going to Hakodadi. The Commodore stated that he could not wait so long a time, but would be obliged to pay his contemplated visit in about a month; and, as for an interpreter, he would take with him Namoura, one of those who was occasionally present in behalf of the commissioners.

The Japanese replied that it would be necessary to retain Namoura, and, beside, that the dialect at Hakodadi was so different another interpreter would be required. The Commodore finally declared that, as for Simoda, he would consider that port opened, in accordance with his express understanding with the commissioners, as soon as he should receive a favorable report of it from Captain Pope, who had been dispatched to make the proper investigation.

He also stated that, though he wished all the ports to be opened at once, none of them could be practically available for more than a year, since the necessary preliminary action of his government would require at least that time before ratifying the agreement with the Japanese. The Commodore then cut the discussion short by saying that he desired to refer these points in detail to the commissioners, which he would do, in writing, at the next interview.

Yenoske, who had evidently been delegated by the commissioners to test the firmness of the Commodore in regard to various points in the proposed treaty which they were loth to concede, now alluded to the establishment of an American consular agent. He said that they would not be required, as the governors of the towns could carry on all the business of supplying the ships with coals, provisions, and other necessaries, without the intervention of any consul, and that, consequently, the commissioners proposed a delay of four or five years before consenting to the appointment of any such officer among them, that they might, in the meantime, discover how the new intercourse with the Americans worked. In reply, the Commodore explained to Yenoske the nature and duties of the consular office, and urged the residence of such an officer as a consul upon the ground of its advantage to the Japanese themselves; and finally declared that this feature must be in the treaty, though he was willing there should be but one consul who should *reside* at Simoda.

The Commodore now informed the interpreters that he wished a junk, loaded with a thousand peculs of coal, to be in readiness for him at Simoda, after his return from Hakodadi. He also desired various other supplies at the same time and place, the whole to be accompanied with a list of prices, as he insisted upon paying for everything. He also insisted that the Americans should be permitted to purchase any articles of Japanese manufacture they might desire, and should have the liberty of going on shore and rambling about the country, under such

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proper restrictions as the Japanese authorities might be inclined to impose. The interpreters seemed to admit the propriety of these concessions on their part, but were evidently apprehensive of the consequences, remarking that their government had been obliged to make severe regulations in regard to the English and Portuguese, and animadverting with anger upon the conduct of Captain Pellew at Nagasaki some years before.[1]

M. Yenoske, Isaboro, Kenzhiro and others came to see Perry to-day, while we were all hurried here and there to pack and mark the presents received yesterday. They wished him to defer his visit to Matsmai for one hundred days, but he refused to do so more than fifty; they said interpreters must go there via Yedo, and the dialect differs so much there that I cannot understand them. The Japanese are unwilling to allow consuls, as they say the governor and interpreter can manage all things with the captain of the ship. The discussion respecting trade after the treaty, walking about, furnishing coal, and the immediate opening of Simoda, was on the whole favorable. In the course of the interview, it came out that, owing to Pellew's foray into Nagasaki harbor, and the suicides of the native officials, great fear was entertained of the designs and violence of the English. It was agreed to-day that a tariff of prices of merchandise, coal, provisions, and other things be made out, for the purpose of informing our people that ships may know what they are to pay and what they can get in Japan.

On March 27 Perry entertained the Japanese Commissioners on board the *Powhatan*; his "notes" continue with this report of the occasion:

On the 27th the five Commissioners with their respective retinues and followers about Seventy in number dined on board the Powhatan by special invitation from me, on which occasion they were received with Salutes and all the honors due to personages of their rank.

Conforming on this occasion to the Japan Custom which forbids the sitting at meals of Subordinates with their superiors, a table was arranged in the Cabin for the Commissioners, and another on deck for their retinues, many of whom were of comparative distinction.

The Captains, my Secretary and Dr Williams Chinese Interpreter being the only persons invited by me to dine with the high functionaries. Every effort was made to entertain the entire party and the day passed with much hilarity and good feeling.

Regarding the conference of the next day, March 28, these five paragraphs are from Narrative, I, 376–77:

As soon as the Commodore had taken his seat, a letter was handed to him, which the Japanese stated they had just received from Simoda. It was from Commander Pope, and had been transmitted through the authorities over land. Its contents gave a satisfactory report of Simoda,[2] and the Commodore at once said that he accepted that port, but declared that it must be opened without delay. Hakodadi, he added, would do for the other, and Napha, in Lew Chew,

[1] The reference is to the visit to Nagasaki in 1808 of H.M.S. *Phaeton* in search of Netherland merchantmen during a time of war (see Narrative, I, 40–42). An epitome of the diary of a Japanese official then stationed at Nagasaki is printed by W. G. Aston in 7 Transactions of the Asiatic Society of Japan, pt. 4, 323–36.

[2] The choice of Shimoda as one of the ports is said to have had nothing in its favor (Gubbins, *op. cit.*, 59). Townsend Harris wrote (September 3, 1856) that Shimoda was a poor harbor, a fishing town of four to five thousand inhabitants, and without commerce "beyond the wants of its small population" (D.S., 1 Despatches, Japan, No. 15). These two paragraphs are from his despatch of November 25, 1856 (*ibid.*, No. 19):

> Every day I reside here, adds to my convictions of the unfitness of Simoda, either as a place for supplying ships with refreshments, or, for Commercial

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could be retained for the third. In regard to the other two, he was willing, he said, to postpone their consideration to some other time.

The Commodore now proposed to sign the agreement in regard to the three ports, and directed his interpreter to read it in Dutch. When the document had been thus read and afterwards carefully perused by the Japanese, they stated that they were prepared to concur in everything except as to the *immediate* opening of Simoda.[1] After discussion, it was finally settled that though the port might be opened, the Japanese would address a note [2] to the Commodore, stating that everything which might be wanting by ships could not be furnished there before the expiration of ten months, but that wood and water, and whatever else the place possessed would be supplied immediately; and to this note the Commodore promised to reply, and express his satisfaction with such an arrangement.

The question now came up with respect to the extent of privileges to be granted to Americans who might visit Simoda, in the discussion of which it was perfectly plain that the Japanese would be distinctly understood as prohibiting, absolutely, at least, for the present, the *permanent* residence of Americans, with their families, in Japan. The distance, also, to which Americans might extend their excursions into the country around the ports of Simoda and Hakodadi [3] was settled; and it is observable, that, at the special request of the Japanese, the Commodore named the distance, they assenting, at once, to that which he mentioned.

The proposition to have consular agents residing in Japan was one which evidently gave great anxiety to the commissioners, and the same grounds were taken and answered as have already been related in the narrative of the Commodore's conversation with the interpreters on a previous page of this chapter. The Commodore was firm in saying there must be such agents for the sake of the Japanese themselves as well as for that of our own countrymen, and it was finally conceded that there should be one, to live at Simoda, and that he should not be appointed until a year or eighteen months from the date of the treaty.

Two more articles, including the new points which had been discussed were now added to the transcript of the proposed treaty, and the Japanese having promised to bring on board the Powhatan next day a copy, in Dutch, of their

purposes. The insecurity of the Harbour has been demonstrated by the loss [in December 1854] of the Diana [a Russian frigate], as before noted; —By the Typhoon or Hurricane of the 22d of September last, when every Vessel in the Harbour, was driven on shore; And by the most important fact, that during a moderate wind on the 20th instant, the Russian Corvette dragged her anchors; thus establishing the belief heretofore entertained, that the great Sea Waves that attended the Earthquake of 1853. had destroyed the holding ground, by washing out the mud, and leaving a bare, rocky bottom.

Simoda is situated near the extremity of Cape Idsu, a Promontory of some 50 miles long, and composed of steep Volcanic cones, of various altitudes, being from 300 to 4000 feet high. The population is composed of Fishermen, and a poor class of Agriculturists; No persons of Rank or wealth, except the Government Officials are to be found here; No merchants have establishments here. Simoda is not the Sea Port of any considerable Town, nor of a fertile and populous Country; Even the small supplies required by a single ship-of-war, cannot be furnished by the Town, or by its immediate vicinity; No Commerce can be expected at a place so destitute of resources, even should the fullest freedom of Trade be granted by the Japanese.

[1] This has support in the dialogue printed in Narrative, I, 384–85; but only two ports were agreed to in the treaty (see Articles 2 and 10). It is curious that both the compiler of the Narrative (I, 387–88) and Commander Adams (*ibid.*, II, 209, quoted below) wrote as if three ports were named in Perry's Treaty.

[2] There is no later mention of such a note; compare the report of this day's conference from Williams (printed below); the point was discussed as late as March 30 (see below, Williams' entry for that date); and see also the explanatory comment of Commodore Perry regarding Article 2 in the paper "AA", also printed below.

[3] Compare the clause in Article 5 of the treaty for a later defining of the limits at Hakodate.

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understanding of the agreement as far as concurred in, the Commodore took his departure.

With the foregoing report of the conference of March 28 should be compared this summary from Williams, 150, of the results of the same meeting:

At noon the Commodore met the Japanese commissioners on shore and discussed some of the points he had drawn up, including those which had been accepted. That for opening Simoda as soon as the Treaty was signed was objected to so strongly that a compromise was agreed upon, which amounted to deferring all trade there, except for this squadron, until the President had promulgated his orders and notices that the place was available. Another hesitancy was seen in the limits to which Americans might go from the ports, and it was at last limited to seven Japanese miles, and a man was to be back the same day. "Temporarily" was also inserted before the word "residing" in this article, as they did not see the use of putting residents on shore there. A good deal of discussion of a friendly nature was carried on to-day upon several points of the Treaty, and all its points and articles were settled.

With the reports of the conference of March 28 in the Narrative and in Williams the account in Diary of an Official of the Bakufu, 112–14, is not wholly accordant, although it is there said that the draft of the treaty brought by Perry "after discussion, was added to and corrected and virtually agreed upon".

It is said in Narrative, I, 377, that on the two days following the conference of March 28 "several notes passed between the Commodore and the Japanese commissioners, in the course of which various questions that had been already considered were more definitively settled"; but according to Williams there were meetings on those two days, which he thus describes (Williams, 150–51):

[*March 29.*] Doing up specimens of American coins, and preparing articles of the Treaty all the morning, which Yenoske cavilled at when he came in the afternoon, accepting some and altering or rejecting others. All the management of the Treaty seems to have been transferred to his hands by the commissioners, for Kenzhiro and others with him said almost nothing. In all these consultations Yenoske seems to possess decisive authority, and he is pretty well fitted for it. Objection was made to the distance allowed for rambles, and the point was conceded for Simoda, starting from a small island in the harbor, and for Hakodade, when the Commodore has been there. A curious objection was made to the ratification of the Treaty, as the Emperor needed only to approve what his commissioners had done, and then it would be evermore obeyed. This people seem to be bred into a full idea of the "right of kings divine, to do just as they have a mind," and to liberate them from such a thraldom can only be brought about by the Gospel. The discussion of one point and another, the appointment of consuls, the opening of the port of Simoda, and the distance to which Americans may ramble there, prolonged the interview till dark.

[*March 30.*] The same party came early to-day and, after going over their Dutch version and making one from it and Mr. Portman's, all the articles, twelve in number, were agreed to, some other points being put into a supplementary letter,[1] one of which was that Simoda is not actually to be opened till next autumn;

[1] There is no reason to doubt that such a letter was written by Commodore Perry. In his despatch No. 43, of April 1, 1854 (printed above), Perry says specifically, regarding American whalers, that "in twelve months they will have the privilege of resorting to two convenient ports for refreshment and repair, and receive kindness and such supplies as the Country can furnish"; and in the passage

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and another respecting consuls. Yenoske, in return for all that Perry had given him, brought a box of sweetmeats; and it was a pretty box indeed. In return he took away a box of Lowell cottons, and also the presents for Kaheyōye, and a promise of a brass howitzer for the two princes, Izawa and Ido, for which they had been asking again and again. It is not for want of cumshaws to the Japanese that we shall fail of making a treaty, especially drinkables of all sorts; though I suppose this is the way to do such negotiations the world over.

In Diary of an Official of the Bakufu, 115, is this paragraph, reporting a conversation said to have been had between Perry and Hayashi on March 30 (the 2d, not, as printed, the "22nd" of the 3d month of the 7th year of Kaei); but it is clear from the other sources that those two personages did not meet on that day; the reported conversation was one between subordinates; and its substance finds support in the quoted entry of Williams for the same day:

Perry said that, although it was agreed at the meeting of the 30th [i.e., March 28, 1854] that Shimoda should be opened by the third month of next year, the treaty had been drawn up to read that it should be opened immediately upon the conclusion of the treaty. He asked that our version of the draft be made to read the same way. He was asked to explain the reason, as it conflicted with the agreement made on the 30th and could not, therefore, be accepted; but Perry then said that unless the treaty provided for an immediate opening of the port he would be placed in an embarrassing position before his own government, and asked that the treaty be made to read in this manner. The Lord Rector replied that if Perry sent him a letter, stating that the port should be opened by the third month of the following year even though the treaty provided that it should be opened at once, he would agree to the change and to the insertion of the word "immediately." Perry now sent him a letter consenting to the opening of the port by the third month of the following year [that month began on April 17, 1855].

The "notes" of Commodore Perry conclude with these paragraphs carrying the record up to April 1, 1854:

The following day [Tuesday, March 28, 1854] being appointed for another interview on shore to settle the final details of the treaty. The meeting took place and after much discussion and many evasions on the part of the Commissioners an arrangement was agreed upon, and Friday the 31st fixed for the signing of the Treaty, which was accordingly done about noon, and at the house erected especially for the conference, the Commissioners giving me three Copies of the Treaty in the Japanese language, duly signed by the four, especially delegated by the Emperor, and in return receiving from me three Copies in English with my Sig-

quoted from Diary of an Official of the Bakufu for March 30 it is said that Perry sent the letter. Clearly there was an understanding whereby the effect of Article 2 (for the opening of Shimoda "immediately") was qualified so that its wording was forthwith applicable only to the American squadron (see the comments on Article 2 in Perry's explanatory paper marked "AA", printed below; also the two reports of the meeting of March 28, printed above). Beyond this, the content of the letter must remain conjectural, as its text has not been found. Williams says that one of its points was "respecting consuls"; perhaps the plurality of Article 11 ("Consuls or Agents") was explained to mean the singular for any given time; Perry had said that "he was willing there should be but one consul who should *reside* at Simoda" (p. 627; see also p. 629).

That letter of Perry was, in the legal sense, a part of the agreement entered into by the Japanese Commissioners, for on the faith of it they signed the treaty. A copy of the letter should, of course, have been forwarded to Washington with the treaty and Perry's covering despatches; but, so far as the record shows, this was not done.

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nature, translations in the Dutch and Chinese, Certified by the Dutch and Chinese Interpreters Messrs Portman and Williams for the United States, and being also exchanged for Japan.[1]

It will be observed that the practice usually pursued in affixing Signatures to treaties was departed from on this occasion, and for reason assigned by the Japanese, that their laws forbade the Subjects of the Empire from putting their names to any document written in a foreign language.

As I did not consider that this omission to sign the English version of the treaty could effect in the slightest degree the validity of the instrument, I made no very strenuous objections to the course they proposed and seemed determined on, more especially as they gave me triplicate copies of their version with certified translations, being well satisfied that all the stipulations as agreed to by them and in their own way, would be scrupulously carried out by their Government.

Indeed throughout the negotiations I was met at every step by objections to forms, and application and use of words which though of little or no importance were tenaceously insisted on by them, such for instance as to substitute the word "Goods" for "Merchandize" and numerous other trivial alterations of like import; by these changes the phraseology of the treaty will not be found as perfect as it would otherwise have been.

And so in the concluding Article I was constrained to frame the sentence in a manner to meet their watchful avoidance of agreeing to any feature in the treaty that would commit them with their Government.[2]

The great object however of effecting an advantageous Compact with this most singular people has been fully accomplished, a compact which secures protection and kind treatment to all Americans who may by chance or design find themselves in any part of the Empire, and which also stipulates to give shelter and supplies to vessels of the United States, and to grant privileges to American Citizens, never in the two preceding Centuries conceded to any foreign people.

And the Government of the United States may well claim the honor of being the first to open friendly and *independent* relations with a nation hitherto claiming the right of entire exclusion from all foreign intercourse unless the immunities granted to the Dutch and Chinese at Nagasaki may be considered in such light.

It may be remarked here that at all our interviews on shore, whatever may have been the number of Officers from the Ships, usually varying from 20 to 50, refreshments prepared in the Japanese fashion were served to all, and on the day of signing the Treaty greater preparations were made; And on all occasions visitors to the Ship, on business with me, have been provided with refreshments.

Supplies of wood and water, poultry, eggs, vegetables &c have been furnished by the Japanese in limited quantities to the several Ships of the Squadron for which they have in accordance with my positive demand received payment, and it is quite probable they will in a short time lose all their scruples in this way, as at Lew Chew where they soon learned to charge and receive good prices for all their supplies.

Respectfully Submitted.

M, C, PERRY
Comm^r in Chief. U.S. Naval Forces East India, China & Japan Seas.

U.S. FLAG SHIP POWHATAN
Off the Town of Yoku hama Yedo Bay. April 3^d 1854.

With Perry's despatch No. 43, of April 1, 1854, as addenda to the enclosed "notes", were two other papers. The first of these, marked AA, which follows, is without date, signed by Commodore Perry, and entitled "Notes explanatory of the Several Articles of the Treaty with Japan" (serial 751, pp. 148–50):

[1] A conversation between Perry and Hayashi following signature is reported in Diary of an Official of the Bakufu, 115–16.

[2] This refers to the use of the words "is to be ratified" instead of "shall be ratified".

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AA.

Notes explanatory of the Several Articles of the Treaty with Japan.

Article 2nd The ports to be fully opened for supplies to Americans any time in April 1855, but wood and water may be obtained after the month of the ensuing May, and other supplies for vessels of War.[1] The latter part of this article changed by request of the Japanese Commissioners, in my letter to the Secretary of the Navy, I have fully noticed this.[2]

Article 4th Great difficulties were encountered in securing the immunities to Americans which this Article grants. The meaning intended to be conveyed by the words "just laws", is that Americans shall not be subject to the exclusive laws and customs of Japan but to laws based upon justice and humanity. This understanding to continue until further negotiation upon the subject and the appointment of a Consular Agent.

Article 5th This article was secured after much opposition. It grants privileges which the most sanguine did not anticipate.

Seven Japanese miles or ri, equal to about ten of ours.[3] This would make a radius of ten, and a periphery of sixty English miles, as the boundary in which American Citizens can freely move about either on the land or water, without molestation from the Japanese so long as they conduct themselves with propriety. The limits of Hakodade will be established after I shall have landed and examined that locality.

Article 6th This Article refers to some future arrangement having more intimate relations to a commercial treaty, but the word "merchandise" was objected to, and the word "goods" substituted.

Article 7th The same objection made to the word "merchandise" and the word "goods" again substituted, the word "temporarily" referring *impliedly* to future arrangements which the Japanese Government is not now prepared for.

Article 8th This Article was insisted on by the Commissioners, upon the ground that the Japanese Government had no Revenue laws, regulating duties on foreign goods and the people were unacquainted with trade.

Article 9th This is a most important article, as there can be little doubt, that on hearing of the success of this mission, the English, French and Russians will follow our example, and it may be reasonable to suppose that each will gain some additional advantage, until a Commercial treaty is accomplished. Article 9th will give to Americans, without further consultation, all these advantages.[4]

Article 10th "Simodi" and "Hakodade" are the only ports to which Ships of the United States may resort at pleasure, but if in distress they can enter with impunity any of the Ports of the Empire, it may be hoped that this privilege will not be abused.

Article 11th I could only induce the Commissioners to agree to this Article, by endeavoring to convince them that it would save the Japanese Government

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[1] This means that from May 1854 wood and water might be obtained at Shimoda by all American vessels, and, by war vessels, other supplies as well; from April 1855 both Shimoda and Hakodate would be "fully opened"; compare the wording of Article 2, the effect of which is qualified, as here stated, by the letter written to the Japanese Commissioners by Commodore Perry, probably on March 30 (see pp. 630–31).

[2] The reference is particularly to the phrase quoted on p. 630, footnote, from Perry's despatch No. 43, of April 1, 1854.

[3] At the time Commodore Perry was misinformed on this point. Seven *ri* equal slightly more than seventeen statute miles. In a later despatch (No. 52, of July 18, 1854; serial 751, pp. 158–60) Perry wrote that the equivalent was "about sixteen English" miles.

[4] It is said that Article 9 of the treaty was "suggested by Dr. Williams" (Williams, 152, footnote, seemingly by the editor; see also *ibid.*, vii; Griffis, *op. cit.*, 366; Griffis, Townsend Harris, 258, footnote). It is also said that owing to the representations of Dr. Williams a clause "providing extra-territoriality" was omitted (Williams, vii); but see Articles 1 and 11 of the Additional Regulations of June 17, 1854.

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much trouble if an American Agent were to reside at one or both of the ports opened by the treaty, to whom complaints might be made of any mal-practice of the United States, Citizens who might visit the Japanese dominions; otherwise I told them it would be necessary to have a Ship of war constantly on the Station, as sailors and others might misbehave, and violate the stipulations of the treaty, without it being known to the American Government.

Article 12th and last. In framing this article I had to manage so as to evade the positive objections of the Commissioners as to the necessity of waiting for an exchange of ratifications, and to make the tenor of the language less imperative, the words "it is to be ratified", instead of those usually adopted, "it shall be ratified" were used.

I have already referred to the objections made by them to the placing of their names to the American version of the treaty. This with regard to their understanding of its perfect validity, is of no importance, and I have only again mentioned it in further explanation to the powers at home.

M, C, PERRY

The second of the two mentioned enclosures to Commodore Perry's despatch of April 1, 1854, is a copy of this note of that date written by Perry to the first Japanese Plenipotentiary (serial 751, p. 150):

U.S. FLAG SHIP POWHATAN
Off the Town of Kana gawa Yedo Bay, April 1st 1854.

To His Highness HAYASHI DAIGAKU NO-KAMI.
&c. &c. &c.

YOUR HIGHNESS, In agreeing to the Convention of Peace and Amity between the United States and Japan, signed yesterday I deem it right and proper to remark, that in consideration of the peculiar and long established laws and Customs of your Government, I have departed in a measure from the forms usually adopted on similar occasions by subscribing to separate papers setting forth the details of the treaty between the two powers. But this cannot make the compact the less binding.

And though the same reasons have induced me to recognise for the present certain limitations to the right of American Citizens to enjoy all the cosmopolitan privileges in Japan which are freely granted to them in other Countries, I have done so, because I was aware that whatever might be the disposition of the distinguished personages with whom I have had the honor to negotiate, to encourage a more enlarged view of the advantages of a peaceful international intercourse, time will be required to bring about those changes in the Empire which the present advanced condition of the World unquestionably calls for.

And in this feeling I have submitted as far as could be done consistently with the dignity of my Nation to restrictions which have been imposed by the laws of the Country upon the movements of the officers and crews under my command, but it cannot be expected that such a state of things can long exist; and with reference to the opening of other Ports for the admission of American vessels, I feel assured that in a short period, experience will satisfy every one that no injury will result to Japan from such arrangement, but rather that the Empire will be benefitted by the adoption of laws more congenial to the Spirit of the times.

As to the limits within which Citizens of the United States can freely move about in the vicinity of Hakodade, these will be settled and defined on my return to Simoda from that place, and when I shall have had an opportunity to examine in person its locality.

With profound Respect

(Signed) M. C. PERRY.
Commdr in Chief. U.S. Naval Forces East India, China & Japan Seas.
And Special Ambassador to Japan.

One more despatch of Commodore Perry regarding the negotiations is to be quoted, his No. 44, of April 4, 1854, received July 11, 1854 (*ibid.*, 151):

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No 44. U.S. Flag Ship Powhatan
Off the Town of Kana gawa Yedo Bay, Japan, April 4th 1854.

Sir, The only favor asked by the Japanese Commissioners, has been that I would give to three of their number, each a brass Howitzer and Launch equipped in the manner of those belonging to the Squadron. This request was repeatedly made.

My reply was that the boats and Guns formed parts of the equipments of the Ships, and could not be spared, but as the Saratoga was going home I would venture to give them the Gun belonging to her. And to recommend that the Government should send out to Japan by some convenient opportunity two more.

I need not say how much they were gratified, nor revert to the advantages that would result to our Citizens, who may visit this Country from these little acts of courtesy, and I most urgently recommend that the Guns, fully equipped with carriages &c be sent to them.[1]

The gift will be returned an hundred fold, by exercising a favorable influence on some future occasion, with men who seem to have the full confidence of the Imperial Government.

It is highly desirable that the kind and friendly feelings, which have been engendered by our recent intercourse may be in every way fostered.

With great Respect I have the honor to be
Your Ob'dt Serv't

M, C, Perry
Commdr in Chief. U.S. Naval Forces East India, China & Japan Seas.

To The Honorable James C. Dobbin
Secretary of the Navy Washington D.C.

The treaty was carried to Washington by Commander Henry A. Adams, U.S.N., who sailed from Yedo Bay on April 4, 1854, in the sloop of war *Saratoga* for Honolulu, where he arrived on May 1; thence Commander Adams proceeded by San Francisco, Panama, and New York and reached Washington on July 12 (Narrative, II, 201). In a letter dated July 12, 1854, from the Secretary of the Navy to the President, submitting the treaty for consideration and disposal, it is said that Commander Adams "arrived in this city yesterday morning" (D.S., Miscellaneous Letters, July 1854, quoted above); in the annual report of the Secretary of the Navy the date of July 10 is given (Senate Executive Document No. 1, 33d Congress, 2d session, serial 747, p. 388).

Acknowledgment of the treaty and congratulations to Commodore Perry on the success of his mission were not written until September 19, 1854; the reason assigned for the delay was "that the desire of the [Navy] Department was to transmit the despatch with the ratification by the Senate[2] through the hands of Commander Adams" (serial 751, p. 180). The instruction cited did not reach Commodore Perry in the Far East, since he left Hong Kong on September 11, 1854, by the British mail steamer *Ganges* to return home on leave (see serial 751, pp. 186, 189); he arrived in New York on January 11, 1855, in the U.S. mail steamer *Baltic*, from Liverpool (New York Herald, January 12, 1855, p. 1).

[1] No record has been found of any action on this urgent recommendation of Commodore Perry.

[2] Meaning the instrument of ratification by the President.

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Final Comment of Dr. Williams

Dr. Samuel Wells Williams was a man inspired by strong religious sentiments; he was with Commodore Perry throughout the course of his mission and was doubtless the most unprejudiced of his associates; frank and open criticism of Commodore Perry in minor matters is to be found in the pages of the journal; so it is worth while to reproduce the "review of the proceedings" written by Williams on June 24, 1854 (Williams, 222–25):

On a review of the proceedings of this Expedition, no one can refuse his assent to the assertion that it has been peculiarly prospered by God, and, so far as we are at liberty to say it, was planned and carried out so as to receive his blessing as a step in his plans for the extension of his kingdom in this land. The appointment of a naval man as the envoy was wise, as it secured unity of purpose in the diplomatic and executive chief, and probably Perry is the only man in our navy capable of holding both positions, which has been proved by the general prudence and decision of his proceedings since he anchored at Uraga last July. It has been favorable to his unbiassed action that he has had no captain under him whose judgment and knowledge entitled him to the least weight in his mind; all, except Buchanan, spent their thoughts in criticising what he did and wishing they were going home. If the Commodore and the Envoy had been two persons, such a state of feeling in the officers might have at last crippled the firmest purposes of the latter and thwarted the whole enterprise. But such a dilemma was avoided, and Perry regarded all under him as only means and agents to serve his purpose, perhaps too often disregarding wishes and opinions of a comparatively trifling nature. But that extreme is almost unavoidable in minds of strong fibre, and bred for years to command, as he has been, such power has habit.

Further, the remarkable weather experienced since Perry left Macao for Shanghai last April—fair, pleasant and healthy in a degree to draw the attention of all, who have more frequently cried out, "See Perry's luck," than been disposed to acknowledge the hand and favor of God in it—has not a little aided the Expedition. Four or five of the ships have grounded, but none have been injured; the "Supply" was ashore two days on the North Sand at Wusung, and thumped the rock in Simoda Bay, but apparently received no damage; the "Powhatan" narrowly escaped ruin near Labuan by striking a rock, losing only her fore foot; the "Macedonian" and "Lexington" grounded, but were soon relieved; and the "Susquehanna" got no damage by running on a bank in the Yang-tsz' kiang. The mistake made by the "Susquehanna" in coming to Yedo Bay, opening that of Sagami instead of Yedo, enabled the Commodore to tow off the "Macedonian" from her sand bank before she received any injury, and to go up before the town of Uraga in imposing array; three powerful steamers like the "Susquehanna," "Powhatan" and "Mississippi" carrying each another vessel, the "Vandalia," "Macedonian" and "Lexington," showed the Japanese the means we had at command, and may have inclined them to receive us now we had come, and not refer to the strong letter [1] they had written Perry through the Dutch requesting him to stay away for three years. It seems to me that he who refuses to recognize the hand and blessing of God in these preservations, and involving his general approval, is unwilling to recognize it anywhere or in anything. The simultaneous arrival of the "Saratoga" and the steamers at Lewchew last year, and of the six ships at the mouth of the Bay of Yedo this year, prevented all delay; and so has the regular passage of the store-ships to China and back to Lewchew and Japan, to Hakodadi, to the Bonins, and to Simoda from Kanagawa, carried out the plans depending on them. The long passage of the "Saratoga" last March is almost the only case of delay, and this caused no embarrassment. The general good health of the 1600 persons in the squadron, destitute as almost all of them have been of fresh provisions since last January, and the good condition of most

[1] Presumably the reference is to the communication from Duymaer van Twist, Governor General of the Netherlands Indies, dated December 23, 1853, a translation of which is printed in Narrative, I, 322; but therein is no mention of three years.

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of the stores brought on, calls for particular mention, as the converse might have hampered the whole enterprise. The Japanese could not easily collect fresh provisions for so large a body of people, and the extremity of sickness might have driven us to the extremity of forcibly supplying ourselves with food at some rate, even if the alternative was instant hostilities and the attack of Yedo itself. Such a procedure, necessary as we might have deemed it for our own preservation, and not to be thought of in almost any position, might have been resorted to by some one less patient, and (I can conceive) might have removed the peaceful opening of Japan to an indefinite period. Now, not a shot has been fired, not a man wounded, not a piece of property destroyed, not a boat sunk, nor a Japanese to be found who is the worse, so far as we know, for the visit of the American Expedition.

Some will ask what has been gained or done by this Expedition at all commensurate with the cost it has been to the United States. What ultimate results will be seen must indeed be estimated, and can only be, when time has disclosed them, both in respect to trade between the two countries and intercourse between their people, in respect to the facilities Japanese coal can give to connecting California and Asia, and in that of supplying whalers and other vessels with provisions and retreat from storms. But in the higher benefits likely to flow to the Japanese by their introduction to the family of civilized nations through the Treaty of Kanagawa, increased by the additional regulations signed at Simoda, I see a hundred-fold return for all the additional expense the American government has been at in sending out this Expedition, and a mode of expending her income which will redound greatly to her credit. By permission of the Commodore, I drew up a paper of a general character which was sent to Lin [1] last evening by Moriyama. In it, I endeavored to show how Japan could learn much which would be of enduring benefit to her by adopting the improvements of western lands, and allowing her people to visit them and see for themselves; adding that it was to set before them the most useful and curious specimens of western art that the President had sent out to them such things as a steam engine, a telegraphic apparatus, a daguerreotype, all sorts of agricultural implements, books and drawings explaining these and other things, and not merely curious articles or eatables or arms, from which they might learn to make such, or obtain the assistance of those who could instruct them. The great change in the policy of western nations from what it was two hundred years ago was referred to as removing all grounds for fear of any evil consequences resulting to them by a greater extension of the liberty now granted, and that no one could wish them to do aught which would be injurious or hazardous. The paper closed with a hint respecting the danger, if Americans were followed by spies and officials wherever they went, and that all that was necessary was to have those who did wrong accused and properly punished.

Proceedings after Signature of the Treaty

Commodore Perry remained in Yedo Bay for some time after the treaty was signed. On April 10 he took his squadron up the bay very near to Yedo; on April 18, leaving his anchorage in the upper bay, he arrived in the harbor of Shimoda (Narrative, I, 398, 400).

By Article 2 of the treaty the "Port of Simoda in the principality of Idzu" was one of the two treaty ports and was to be opened "immediately on signing this Treaty". Perry was at Shimoda until May 13. Some controversies on minor points arose with the local authorities, but were adjusted to Perry's satisfaction (see *ibid.*, 417–26, *passim*; Williams, 165–85, *passim*); by the close of his visit Perry had "succeeded in making a thorough survey [2] of the harbor, had acquired a

[1] Hayashi.

[2] See the chart entitled "Simoda Harbor", one of the fourteen charts bound at the end of volume 2 of the Narrative and which in the list preceding those charts is numbered 13 and called "Harbor of Simoda"; see also the treaty chart; and compare Hydrographic Office Chart No. 2189, "Shimoda Ko and Approaches".

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considerable knowledge of the place and its resources, and, above all, impressed the people with a just idea of the friendly relations he wished to establish with them, and taught the authorities that no infringement, in the slightest degree, of the stipulations of the treaty of Yoku-hama would be allowed to pass with impunity" (Narrative, I, 427).

On May 13 Perry left for Hakodate, the other treaty port, "in the principality of Matsmai", which was to be opened "immediately after the same day in the ensuing Japanese Year", that is to say, the same day as that on which the treaty was signed (Article 2).[1]

By Article 5 of the treaty the limits of Shimoda as a treaty port had been fixed; but those at Hakodate were "to be defined after the visit of the United States Squadron to that place". Commodore Perry remained at Hakodate from May 17 to June 3;[2] at the outset he delivered to the local authorities a copy of the treaty in Chinese and a letter from the Japanese Commissioners which "commended the Americans to the ordinary welcome and good treatment, and enjoined upon the authorities to supply the ships with provisions and water". After a conference (May 18) between some members of Perry's staff and the Governor of Hakodate, the latter wrote (May 19) that he had not known of the treaty and was without instructions from Yedo; but he agreed that "rambling about the country" would be allowed and that supplies would be furnished; a bazaar was opened; and three houses were assigned for the accommodation of the Americans (see Narrative, I, 433–36). One result of this freedom of friendly intercourse is an elaborate description of Hakodate and its people (*ibid.*, 436–66).

On May 19 and 20[3] there were conferences between Commodore Perry and "Matsmai Kangsayu,[4] the great officer of the family of the prince of Matsmai"; but that personage was not authorized to settle the question of the limits of the treaty port. Commodore Perry had expected that he would meet at Hakodate a delegation with instructions and powers; but when on June 1 a communication (written in Japanese, Chinese, and Netherlandish) from two "Japanese imperial government officers", Amma Junnoshin and Kirayama Kenjiro, was received and a conference with them was had, it appeared that they also lacked authority; accordingly, the subject was referred for discussion with the Commissioners who were to meet Commodore Perry at Shimoda (see *ibid.*, 467–77).

During the visit to Hakodate a survey[5] of the harbor was made;

[1] This would be April 19, 1855, as there was an intercalary month in the year of the treaty (see Bramsen, *op. cit.*, 124–25).

[2] On this visit, see Williams, 185–203, *passim*. Chinese was the chief medium of communication (see *ibid.*, 187, 188, 189, 191).

[3] According to Williams, 188–92, the dates were May 19 and 22 and perhaps also May 20; his account is to be regarded as the more accurate.

[4] Matsumae Kageyu, a relative of the prince, Matsumae Idzu-no-kami (see Williams, 188).

[5] See the chart entitled "The Harbor of Hakodadi", one of the fourteen charts bound at the end of volume 2 of the Narrative and which in the list preceding those charts is numbered 14 and called "Harbor of Hakodadi"; and compare Hydrographic Office Chart No. 2291, "Hakodate Wan".

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and two seamen of the *Vandalia*, who had died during the stay of the squadron, were buried with appropriate ceremonies in ground allotted for that purpose by the Japanese (*ibid.*, 475–76).

At Shimoda, where Commodore Perry again arrived on June 7, there were negotiations with the Japanese Commissioners, of whom there were now seven,[1] which continued from June 8 to 17 and which are thus described (*ibid.*, 477–79, 481; see also Perry's despatch [2] No. 52, of July 18, 1854, in serial 751, pp. 158–60):

> At noon, the Powhatan, passing Vandalia bluff at the entrance of Simoda harbor, ran in and came to anchor in her former berth, followed by her consort the Mississippi. The store-ship Supply was found at anchor in the harbor. Shortly after anchoring, some of the Japanese officers came on board the flag-ship, and cordially welcoming the Commodore on his return to Simoda, informed him that the commissioners had arrived from Yedo, with an addition of two to their number. As the Commodore was very desirous of completing his business with these functionaries, who, judging from past experience, would probably be somewhat slow in all their movements, he sent his flag-lieutenant on shore to propose an immediate interview. It was ascertained by this officer that the the commissioners were out of town, but very soon after a message arrived, to the effect that they would return at once, and be in readiness to meet the Commodore the next day at noon.
>
> The Commodore landed with a suitable escort on the next day [June 8], and was received at the temple by the commissioners, with the usual formal compliments. The two new members of the commission were presented by name and title as Tzudsuki, Suraga-no-kami, (prince of Suraga,) and Take-no-uchisetaro, comptroller of the revenues: the chief commissioner then stated that Simoda had been made an imperial city, and that Izawa, Prince of Mimasaki, and Tzudsuki had been appointed its governors, with Kura-kawa-kahei and Ise-sin-toheiro as lieutenant-governors. In consequence of this new organization the commissioners declared that it would be necessary to establish certain boundaries to the city by means of walls and gates, in order to define the limits of the imperial jurisdiction; and asked whether the Commodore would object to the erection of such, with the understanding that the Americans should have the privilege of going where and when they pleased within them, and beyond them, *on asking permission*, which permission would always readily be granted. The Commodore replied that he had no desire to interfere with any plans of the government, provided they did not violate the stipulations of the treaty; and, reminding them that the Americans had a perfect right, guarantied to them by that document, of moving unmolested within the limits of seven *li* or *ri*, said that, of course, he would leave what was beyond that distance to be governed by their own regulations.* It was then mutually agreed that three American officers should accompany the Japanese officers appointed to affix the boundaries, and regulate the erection of the walls and gates at Simoda. The Commodore, however, positively refused to consent that Americans should ask any permission of the Japanese officers, or of any one else, to go anywhere within the limits of the seven *ri* fixed by the treaty, they, of course, conducting themselves properly and peaceably.
>
> The great discussion, however, was concerning the boundaries within which our countrymen might go at Hakodadi. These had not yet been settled at all. The Japanese wished to confine Americans within the city itself; but as the Commodore protested most strongly against this, the subject was postponed for future

[1] In Narrative, I, 348, footnote, are reproduced the "heraldic devices of the Emperor [*Shogun*] and Commissioners, as well as that of Lew Chew".

[2] The date of receipt of this despatch is not of record; the example thereof in the Navy archives is a duplicate.

* A *ri* is equal to $2\,^{453}/_{1000}$ English statute miles; 6 feet is equal to 1 ken; 60 kens make 1 choo; 36 choos make 1 ri. The fans of the Japanese are of uniform size, six of them making five English feet. They are used as measures, recognised by the laws.

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consideration. The commissioners having stated that a special place had been set apart for the burial of Americans, asked permission to have the body of the man buried at Yoku-hama removed to Simoda. This was granted, and a promise made that proper persons from the squadron should be selected to assist in the removal.

The suggestion of the Commodore that pilots and a harbor-master be appointed was readily acceded to by the commissioners, who promised that suitable persons should be chosen and made acquainted with their duties. The conference then closed and was resumed on the following day, in the course of which the question again came up in regard to the limits at Hakodadi, but its settlement was, for the second time, postponed. A general conversation ensued over the refreshments with which the Japanese entertained their guests, in which the commissioners showed, by their enquiries, that lively interest which was uniformly exhibited among the educated classes in the events transpiring in different parts of the world. They were very curious to know something about the products and manufactures of the United States, and asked our views in regard to China and its revolution, and concerning the war between Russia and Turkey.

Another conference took place on the succeeding day, but without any definite result in regard to the limits at Hakodadi, although the question was discussed for several hours. An attempt was made by the commissioners to obtain the consent of the Commodore to a regulation prohibiting the Americans from remaining on shore after sunset, which was positively refused. Two (the newly appointed commissioners) had been chosen expressly to settle the question in regard to the comparative value of the Japanese and United States currencies, and Pursers Speiden and Eldridge were selected by the Commodore to confer with them on that subject. An important result ensued, embodied in an interesting and valuable report made by those gentlemen to the Commodore.

After a succession of daily conferences, which continued from the 8th to the 17th of June, a mutual agreement was finally adjusted on the latter day,[1] in regard to the various disputed points of detail not specified in the treaty. These are embodied in the following additional regulations:

[Here follows the English version of the Additional Regulations, printed above]

These regulations were agreed to on the part of the commissioners only after a very hard struggle. The question of limits to the Americans, both at Simoda and Hakodadi, was the one most difficult of adjustment, in consequence, as it appeared, of the trouble in reconciling the imperial and local jurisdictions. The commissioners urged that the authority of the Empire did not extend as far as the seven Japanese *ri*, or sixteen English miles, guarantied to the Americans by the treaty of Kanagawa. The Japanese officers had pointed out three positions to the American officers, who had been designated by the Commodore to be present, as the sites for the gates and walls. Neither of these was distant more than a mile and a half from Centre Island, the starting point agreed upon from which to mark the boundary. The gates were finally erected at the spots indicated, when the commissioners formally proposed that the Commodore should now assent to a regulation making it necessary for Americans desiring to pass beyond them to obtain permission first from the Japanese officer on duty. But the Commodore peremptorily refused, and was firm in resisting all efforts, great or small, to weaken, in the slightest degree, the concessions already made to the Americans by the

[1] This sentence is from the journal of Williams for June 14 (Williams, 211):

> In the afternoon the additional regulations were agreed upon with Moriyama, he standing out stoutly for discarding entirely the use of Chinese in all official communications, evidently, I think, so as to keep the whole intercourse in his own hands; it was compromised by allowing no Chinese when there was a Dutch interpreter.

And for June 17 there is this entry (*ibid.*, 212–13):

> At three o'clock the Commodore went to see the officials and exchange the triglot copies of the Regulations, but they were not ready, nor were his sealed, and therefore no exchange was made. . . . It was not till nearly six o'clock that we could get off, by which time it was too late to think of taking a walk.

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treaty. He intimated, however, a willingness to assent to such regulations as were undoubtedly necessary to govern the Japanese authorities as well as the Americans; but as for modifying or in any way altering the treaty, he wished them distinctly to understand that it was entirely impossible. In regard to the limits of Hakodadi, the commissioners at first wished to confine them to one street, then to the whole town, then to the projecting promontory extending toward the sea, next to three Japanese ri, and then to three and a half. They thus contested the ground, inch by inch. The Commodore proposed that the Americans should enjoy the same extent of boundary as had been granted at Simoda; but this was so pertinaciously opposed that it was thought expedient to compromise for five Japanese *ri*, or twelve English miles; and as the country in the neighborhood of Hakodadi is mountainous and sparsely settled, this restriction will prove of no great consequence. Nothing, however, was more apparent than that the Japanese, admonished by their old Portuguese experience, were exceedingly reluctant to allow Christian foreigners to come among them at all, even for temporary purposes.

The agreement reached was embodied in a paper of "Additional Regulations" dated June 17, 1854, signed in the two languages, with "a certified translation in the Dutch language"; the text is among the papers following the headnote, coming after the Netherlandish translation of the treaty.

In Article 2 of the Additional Regulations are mentioned Kakizaki and Centre Island; for these, see the chart of "Simoda Harbor", previously cited from Narrative, II; also Hydrographic Office Chart No. 2189, "Shimoda Ko and Approaches". Centre Island is Inubashiri Shima.

This remark of Commodore Perry is from his despatch No. 52, of July 18, 1854:

The Commissioners were not prepared to establish any permanent regulations respecting Hakodadi, as all of them were utterly ignorant of the Town and its neighbourhood; but this if found necessary can be done at some future time, when like Simoda it Shall be made an Imperial City, and Consequently pass from the jurisdiction of the Prince of Matsmai.

Agreement on rates of currency exchange was sought, but was not reached. One obstacle was the unfortunate provisional arrangement previously made by which the dollar was the equivalent of only 1,200 "cash".[1] The result at Shimoda of such evaluation is thus described (Williams, 175–76, April 28, 1854):

The rate at which it is arranged that our coin shall be taken renders the price of all articles which are procured more than double what they are usually sold at. The Commodore has agreed upon 1200 cash as the worth of a dollar, while the people pay nearly 3000 as the equivalent of the same weight in silver; when, therefore, we buy articles in the shops for silver the people reckon the money at their valuation of cash, but when, according to the arrangement, the shopman takes

[1] As the approximate current rate of Chinese "cash" to the dollar at Shanghai was 1,200, it was probably assumed by Commodore Perry that this would be a fair rate in Japan.

Doubtless the squadron was stocked with copper currency of China in 1854 as in 1853; the ship's stores for the earlier cruise included five tons of "cash" (see Narrative, I, 148, and footnote). Assuming five tons to mean 11,000 pounds and taking the average weight of a cash to be 36 grains, the number of coins laden was about 2,160,000; in American money, at 1,200 to the dollar, this would be, say, $1,800.

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them to the guardhouse where the official comprador has his office, the other rate of exchange is adopted, and cheating is supposed to be extensively carried on, while in fact much of it is owing to this unequal valuation of the dollar. The complaints of the men who buy with silver are loud, while those who take cash ashore have no complaints to make, because they have already paid their discount on board. Articles of fine workmanship are few here, but the best are rapidly sold, and if the officials only took a moderate percentage on them I would let the shopmen have the profit of the exchange for a while, until a juster valuation was made out.

In Perry's despatch No. 52, of July 18, 1854, there is this paragraph on the subject of the currency:

Another object of the Commissioners was to enter into Some arrangement respecting the currency and exchange, having more particular reference to the prices to be paid for articles, furnished to Americans, conformably to the Treaty, accordingly they appointed a Commission of nine to discuss the matter, and on the part of the Squadron, I delegated Pursers Speiden and Eldredge, respectively of the Mississippi and Powhatan. The result of the discussion upon the Subject will be found in the papers enclosed and lettered B and C.

The mentioned enclosures B and C, dealing also with the price of coal, follow:

B.

U.S. Flag Ship Powhatan
Simoda, June 12th 1854.

Gentlemen, You are hereby appointed to the duty of holding communication with certain Japanese Officials delegated by the Imperial Government in conformity with the Treaty of Kanagawa, to arrange with Officers alike delegated by me the rate of currency and exchange which shall for the present govern the payments to be made by the several Ships of the Squadron for articles that *have* been and *are* to be obtained, also to establish, as far as can be, the price at which Coal, per Pecul or Ton, can be delivered on board at this Port of Simoda.

It is not to be understood that the rate of Currency or exchange which may be agreed upon at this time is to be permanent, on the Contrary it is intended only to answer immediate purposes:—Neither you or myself are sufficiently acquainted with the purity and value of the Japanese Coins to establish a fixed rate of exchange, even if I had the power to recognize such arrangement.

It will however be very desirable for you to make yourselves acquainted with all the peculiarities of the Japanese Currency, and also if practicable, with the laws appertaining thereto; as the information will be valuable in facilitating all future negotiations upon the subject.

You will of course before entering into any agreement which may be considered binding, refer to me.

Very Respectfully.
Your ob'dt Serv't,

(Signed) M. C. Perry.
Comm^r. in Chief. U.S. Naval Forces East India & China & Japan Seas.

To Purser Wm Speiden *U.S. Navy.*
Purser J. C. Eldredge, *U.S. Navy.*

C.

U.S. St. Frigate Powhatan
Simoda, June 15th 1854.

Sir, The Committee appointed by you in your letter of the 12th Inst. to confer with a Committee from the Japanese Commissioners in reference to the rate of exchange & currency between the two Nations in the trade at the ports opened, and to settle the price of Coal to be delivered at this port, beg leave to report,

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The Japanese Committee, it was soon seen came to the conference with their minds made up to adhere to the valuation they had already set upon our coins, even if the alternative was the immediate cessation of trade. The basis upon which they made their calculation was the nominal rate at which the government sell bullion, when it is purchased from the mint, and which seems also to be that by which the metal is received from the mines. The Japanese have a decimal system of weight, like the Chinese, of catty, tael, mace, candareen & cash, by which articles in general are weighed, but gold & silver are not reckoned above taels; in China, a tael of silver in weight and one in currency are the same, for the Chinese have no silver Coin; but in Japan, as in European Countries, the standard of value weight and that of currency weight differ. We were told that a tael weight of silver has now come to be reckoned, when it is bullion, as equal to 225 candareens, or 2 taels, 2 mace, 5 candareens; but when coined, the same amount in weight is held to be worth 6 taels, 4 mace. It is at the bullion value that the government has decided to receive our dollar, the same at which they take the silver from the mines, asserting that as its present die and assay give it no additional value, it is worth no more to them. In proportion to a tael, a dollar weighs 7 mace, 1⅛ candareens, which at the rates of bullion value, makes it worth 1 tael, 6 mace, or 1600 cash. Thus the Japanese Government will make a profit of 66⅔ per cent. on every dollar paid them of full weight, with the trifling deduction of the expense of recoining it. The injustice of this arrangement was shown, and the propriety of paying to the seller himself the coin we gave at this depreciated rate urged, but in vain.

For Gold, the rate is more, as the disparity between the value of bullion and that of coin, among the Japanese is not so great. A tael weight of gold is valued at 19 taels in currency, and a mace at 1 tael, 9 mace; the gold dollar weighs almost 5 candareens, but the Japanese have reckoned it as the 20½ part of a $20. piece, which they give as 8 mace, 8 candareens, and consequently the dollar is only 4 cand. 4 cash. This weight brings the gold dollar, when compared with the tael of bullion gold worth 19 taels, to be worth 836 cash; and the $20. piece to be worth 16720 cash, or 16 taels, 7 mace, 2 cand. This, when converted into a silver value, makes a gold dollar worth 52¼ cts. and a $20 piece worth $10.45, at which the Japanese propose to take them. But this valuation of the gold dollar at 52¼ cts. when reckoned at 836 cash, its assessed value by the Japanese Government, suffers the same depreciation as our silver, & its real value when compared with the inflated currency in use among the people, is only about 17¼ cts.; consequently, by this estimate gold becomes 50 per. cent. worse for us to pay in than Silver. The currency value of a gold dollar, taking the *ichibu* as of equal purity, and comparing them weight for weight, is only 1045 cash, or nearly 22 cts. in silver; so that the actual depreciation on the part of the Japanese is not so great as in silver, being for the two metals, when weighed with each other,—for Silver as 100 to 33⅓, & for gold, as 22 to 17. The elements of this comparison are not quite certain, and therefore its results are somewhat doubtful; but the extraordinary discrepancy of both metals compared with our coins, and with their own copper coins, shows how the Government has inflated the whole monetary system in order to benefit itself.

The parties could come to no agreement, as we declined to consent to the proposals of the Japanese, who were decided to adhere to their valuation of a silver dollar at 1 tael, 6 mace, or 1600 cash;[1] neither would they consent to do justly by us in relation to the moneys paid them at this place before our departure for Hakodadi, at the rate of only 1 tael, 2 mace, or 1200 cash to the dollar, by which they had made a profit of 75 per. ct. on each dollar, stating that the money paid them at this rate had passed out of their hands, & moreover that the prices placed upon the Articles furnished had been charged at reduced prices with reference to the low value placed upon the dollar.

For the Amount due & unsettled for supplies received at Yoku hama, and on account of which Purser Eldredge paid Moryama Yenoske, Imperial Interpreter, $350. in Gold and Silver that they might be assayed and tested at Yedo, they consent to receive the dollar at the valuation now placed on them, that is, at the rate of 1600 cash for the Silver dollar.

[1] As to the effect of this, see Nitobé, Intercourse between the United States and Japan, 72.

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We carefully investigated the price of the Coal to be delivered to vessels in this port. We learn that 10000 catties or 100 piculs have arrived, and this, at the rate of 1680 catties to a ton of 2240 lbs. or 16⅔ piculs, costs 262 taels, 6 mace, 5 cand. 3 cash, or $164.16 making the rate to be $27.91 per. ton. The Japanese state that the price of Coal would be considerably reduced, as the demand for it increased, and their facilities for mining became more perfect.

In conclusion, we take pleasure in expressing our thanks to Messrs Williams and Portman, whose services as Interpreters were indispensable, and from whom we received important aid in our investigations.

We have the honor to be Respectfully,

Your Obedient Serv'ts.

(Signed) WILLIAM SPEIDEN, *Purser. U.S. Navy.*
(Signed) J. C. ELDRIDGE, *Purser. U.S. Navy.*

To Commodore M. C. PERRY,
Commander in Chief. of the U.S. Naval Forces, in the East India & China Seas.

Two meetings of the joint currency committee are reported in these entries of Williams' journal (Williams, 208–9, 210–11):

[*June 13.*] Mr. Spieden and Mr. Eldredge took me along with them this morning to assist them in the discussions respecting the currency, in which there is likely to be no little difficulty, arising in some degree from the mistake we made in offering to value our dollar at 1200 cash, and letting it go at that until we went north, but still more from the evident desire of the Japanese to force us to pay in our gold and silver at their arbitrary valuation. On reaching the temple, we found Kurokawa and the committee ready to meet us, eleven people sitting in solemn rows to take note of what we and each of them said. Setting aside what was done yesterday, we began by proposing an equal exchange of gold for gold, and silver for silver, and after no small delay made them produce two ichibu, whose weight we compared with our dollars; they agreed that three ichibu made one dollar, but refused to consent to an exchange, saying that their valuation of gold and silver was so arbitrary that no reference could justly be made to it in conducting trade.

[*June 14.*] The finance committees separated to-day, unable to come to any agreement, for the Japanese refuse to exchange our coins at the value in cash of silver, but, regarding our dollar as bullion, they give the nominal valuation at the mines, where weight is reckoned by taels and mace, and cheat us of just 66⅔ cents in every dollar. The currency is now perfectly arbitrary, for the toō-hiaku is probably not worth more than ten copper cash, while it goes for one hundred; and compared with silver it is as cheap again as our cent, being nearly four times as large and only rated at 2.05 cents. Silver compared with gold is actually about 4800/1045, or only 4¾ times dearer; but discarding weight for weight, supposing an ichibu as pure as a gold dollar, the prescribed valuation makes $20 worth $10.45, whereas $20 silver would be worth $6.66, or an ounce of gold worth $8.448, and one of silver 33 cents, or 25.6 times cheaper. This most extraordinary valuation was acknowledged as forced upon the people by their rulers, but the latter would not take our dollars by it, though they paid the persons of whom we bought articles by it, pocketing the difference. If we disliked these terms we could stay away and not trade. In giving gold, however, when compared with the prices paid by the people in cash, it must be depreciated as silver and therefore is actually worth only one third of the above 52½ cents per dollar, or only 17 cents, making our $20, when compared with the rates of currency among the people, worth $3.45! Yet the Japanese actually make five times a greater depreciation of our silver than gold, for while the latter is as 22 to 17, the former is as 33 to 100, so cheap is gold here compared with silver. Of course, we refused to agree to any such depreciation of our coins, and broke up the conference.

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During the morning of June 25, 1854,[1] Perry sailed from Shimoda for his fifth and final visit to the Ryukyu Islands.[2] Shortly before his departure from Shimoda two other papers were signed, implementing Article 8 of the Additional Regulations; one of these, dated June 23, 1854, establishing regulations for pilots at Shimoda and for the supplying of American vessels at that port, is in the form of an agreement signed by the Flag Lieutenant of the squadron and the Lieutenant Governor of Shimoda; the other, dated June 22, 1854, and signed by the Flag Lieutenant alone, is a certificate of the appointment of certain pilots and also of the rates of pilotage set forth in the agreement. Each of the two papers has the signed approval of Commodore Perry; and, so far as the records show, they were signed in English only, with Netherlandish translations certified by Portman. Prints of the two papers (in English and Netherlandish) were made by the press [3] of the squadron, and copies were delivered to the Japanese authorities on June 24 by Lieutenant Bent (Williams, 226).[4] Copies were enclosures to Commodore Perry's despatch No. 52, of July 18, 1854 (see serial 751, pp. 158–60, 165–67). The English texts and the certified Netherlandish translations are printed as the last of the papers following the headnote. This statement regarding the two papers is from Narrative, I, 487–89):

Arrangements had been made to carry out the regulations agreed to with the authorities in regard to the appointment of a harbor-master and three pilots, and these now, at the last moment, were completed by the signature of Kurakawa-kahei, the deputy-governor, to a written contract, copies of which were made in English and Dutch, and deposited with the Japanese officials at Simoda. The harbor-master and the pilots, after having been selected by the local authorities, were brought to the Commodore for his confirmation of their appointment. The Commodore, having signified his approval of the choice, gave to the harbor-master a spy-glass, to be kept always at the look-out place and to pass to his successor in office; to each of the pilots a comfortable overcoat and two American ensigns, to be displayed on board the pilot-boats when going to any vessels that may appear off the harbor. The surveyors had marked the rocks, buoys, and prominent headlands with signal flags, but as the Japanese authorities objected to them as seeming to imply some evidence of right to possession, it was readily conceded that the Japanese should substitute for them their little white and black striped flags.[5]

On leaving Shimoda, Williams wrote these sentences, which are interesting as showing the large retinues of the Japanese Commissioners (Williams, 227, June 25, 1854):

Doubtless our departure was a relief to the overburdened town of Simoda, for during the last few days almost no provisions were to be procured; and yesterday

[1] The date is from Williams, 226, and the log book of the *Mississippi*; in Narrative, I, 489, it is given as June 28; the former are certainly right.

[2] It was during this visit, which continued until July 17, that the Loochoo compact of July 11, 1854 (Document 166), was signed.

[3] Regarding this printing press, see Williams, 2. The President had "directed a small printing press with type and materials for printing of all kinds to be sent out by the Vermont"; but the *Vermont* did not join Perry's squadron (serial 751, pp. 15, 16).

[4] The pilot who met the *San Jacinto*, with Townsend Harris on board, on arrival at Shimoda on August 21, 1856, had "his commission as pilot for American vessels, given him by Commodore Perry, and printed in English and Dutch, by the 'Japan Expedition Press' " (Wood, Fankwei, 299–300; and see Complete Journal of Townsend Harris, 200).

[5] For the promise of the authorities of Shimoda to replace two buoys in the harbor, if removed, see serial 751, pp. 190–91.

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morning we saw the long trains of Lin and his colleagues winding along the beach toward Kakizaki on their return to Uraga and Yedo. After such an exit the townsfolk would hardly recognize their own quiet village, if the presence of officials in Japan is as much a scourge to the common people as it is in China. There must have been a thousand people in the procession, and their various insignia formed rather a picturesque train.

The Additional Regulations

The first information of the Additional Regulations (and of the two papers subsidiary thereto) was conveyed to Washington by the despatch of Commodore Perry to the Secretary of the Navy dated at sea July 18, 1854 (No. 52); the example of that despatch in the Navy archives is a duplicate; the date of receipt, which is not stated, was probably about October 1, 1854. There is no record that any communication of the Additional Regulations was made by the Navy Department to the Department of State at the time or later. The Additional Regulations were first printed in the Senate document[1] heretofore cited as serial 751 (pp. 161–62); that document, of 195 pages, was doubtless issued soon after the Senate order to print of February 2, 1855, but perhaps not until after the adjournment of Congress some four weeks later (March 3, 1855).

When Commander Adams was at Shimoda for the exchange of ratifications of Perry's Treaty, this statement was officially made to him on February 20, 1855, the day before the exchange: "We wish further to say that the commissioners have received from Yedo a ratified copy of the supplementary articles to the treaty of Kanagawa, which were added by Commodore Perry last year at Simoda, and we wish to know if you will receive it and carry it to the United States. When these supplementary articles are also confirmed by the American government, the ratification can be sent out by some ship coming to Japan"; to which Commander Adams answered: "Yes, I agree to do this" (Narrative, II, 208). Upon arrival at Washington on June 25, 1855, Commander Adams delivered various papers of the exchange and in his accompanying report of that date (quoted below) wrote to Secretary of State Marcy: "I hand you also a ratified copy of some supplementary articles made by Commo. Perry to the treaty after it's signature at Kanagawa, with a request from the Japanese Government that the ratification of these articles by the U.S. government may be sent to Japan as soon after it is completed as may be convenient."

With that letter of Commander Adams the record ends. So far as appears, the Department of State received no manuscript of the text of the Additional Regulations other than the Japanese instrument of ratification thereof, which is now in the treaty file; the Additional Regulations were not ratified by the United States; they were never officially printed by this Government except in the Senate document cited and in the Narrative (I, 479–81); no treaty collection examined, American, Japanese, or other, contains their text; no communication regarding them was made to the Japanese Government; the instructions to Townsend Harris, who was appointed Consul

[1] Senate Executive Document No. 34, 33d Congress, 2d session.

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General to Japan on August 4, 1855, include no mention of them; in the first despatch written by Harris after his arrival at Shimoda on August 21, 1856, he says that one of the objections raised (on August 26) to his official reception as Consul General was that the "additional Articles of the Treaty, had not been ratified, therefore the Treaty was incomplete" (D.S., 1 Despatches, Japan, No. 15, September 3, 1856); but no further or later reference to the Additional Regulations is made by Harris in his despatches.[1]

One is left to conjecture; perhaps the responsible officials of the Department of State in 1855 remained unaware of the Additional Regulations despite their communication to the Senate by the President with a report by the Secretary of the Navy and publication in the Senate document cited, and even despite the report of Commander Adams; perhaps the subject was overlooked after knowledge, even though instructions to Townsend Harris regarding Perry's Treaty were dated as early as September 13, 1855 (D.S., 1 Instructions, Japan, 4–6); neither hypothesis is very plausible. An alternative would be to suppose studied silence and neglect; but such an attitude seems reasonless.

It seems the better view that the Additional Regulations were effective on their signature, subject only to due ratification of the treaty and exchange of ratifications thereof.

In the Additional Regulations there is no mention of ratification; the treaty by its terms required implementation (see Articles 2 and 5 of the treaty, Article 11 of the Additional Regulations, and the final paragraph of the regulations respecting pilots); the signers of the Additional Regulations had full authority from their respective Governments; there was nothing in the Additional Regulations inconsistent with the treaty; and out of abundant caution there was a saving clause (following Article 12); agreements for the due execution of a treaty in force may as a matter of course be made under the direction of the President without submission to the Senate; ratification of the Additional Regulations by the Government of Japan was received without dissent by the Government of the United States; there is no doubt that the Additional Regulations were deemed by the officials on the spot, both American and Japanese, to be operative from signature and that, so far as occasion arose (e.g., Article 7), they were

[1] In his journal there are two direct references to the Additional Regulations (Complete Journal of Townsend Harris, 210, 282, entries respectively of August 27 and December 1, 1856). In the earlier of these Harris writes:

> They [the Japanese officials] then said that the Treaty provided for a Consul, but not a Consul General; that the Additional Articles had not been sent out as ratified; that they expected the Government of the United States would send out an Ambassador with the ratified Articles, and then enter on negotiations about sending a Consul.

See also in *ibid.*, 200, August 21, 1856, the mention of the pilot in a boat flying the American and Japanese flags, which met the *San Jacinto* on her arrival with Harris at the port of Shimoda.

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acted on; and the Japanese Government waived its objections to the reception of Townsend Harris as Consul General.

The procedure would have been more regular if the Government of the United States had formally approved the Additional Regulations or had acknowledged the ratification thereof by the Government of Japan; but tacit assent was enough. The text of the Additional Regulations was among the papers communicated by the Secretary of the Navy to the President and by the President to the Senate, in response to a requesting resolution, and officially published some months before the treaty was proclaimed. Almost concurrently with proclamation, the Japanese ratification of the Additional Regulations was received at Washington, and no objection thereto was subsequently communicated to the Japanese Government. Under those circumstances, some of a positive and some of a negative nature, approval is to be deemed implicit.

The Additional Regulations were mostly (and the two papers subsidiary thereto wholly) of local application, concerning the two treaty ports, Shimoda and Hakodate; of the twelve articles, only two or three (Articles 7 and 12 and perhaps Article 10) were of a general nature. Of these, Article 12 was of temporary application and Article 7 was no more than a rule for facilitating official intercourse (cf. Article 8 and the final clauses of the convention of June 17, 1857, and the final clauses of the treaty of July 29, 1858; 11 Statutes at Large, 723–24; 12 *ibid.*, 1051–68).

So far as the Additional Regulations related to treaty ports, they were superseded by the clauses of the treaty of July 29, 1858, which went into force on July 4, 1859; indeed, by that treaty (paragraph 7 of Article 3) Shimoda ceased to be a treaty port on January 4, 1860. In general, the Additional Regulations were effective for only a brief period and consequently proved to be of comparatively minor importance, particularly in view of the few visits made by American vessels to the two treaty ports [1] before the treaty of 1858; these circumstances may account, in part, for the absence of reference to the Additional Regulations in the official correspondence of the period.

The Exchange of Ratifications

Perry's Treaty was ratified by President Franklin Pierce on August 7, 1854. The instrument of ratification prepared for exchange with the Government of Japan included only the English version of the treaty (see Narrative, II, 203, quoted below). That instrument, sealed with the pendant Great Seal in a skippet of gold and enclosed in a handsome, gold-fitted box, was one of the most elegant and costly documents of its kind emanating from the Government of the United States. The bill of Samuel Lewis, Washington

[1] On this point, see Gubbins, *op. cit.*, 75, who says that trade was "insignificant". Townsend Harris wrote on December 6, 1858 (D.S., 2 Despatches, Japan, No. 41), that no merchant vessel had visited Shimoda since March 1857; and vessels of the American flag calling at Hakodate seem to have been mostly whalers (see the remarks of Harris on February 9, 1858, in the translations of Mr. Dooman, printed in the editorial notes to the treaty of July 29, 1858).

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jeweler, for the gold skippet "weighing 482 dwt^s 12 grains", for the gold clasps, plate, and hinges of the treaty box, and for engraving the clasps, plate, and hinges, was paid August 25, 1854, in the sum of $1,220.52 (D.S., Day Book, Foreign Intercourse, 1853–67, 37). Including the pages of vellum, the wax casting of the seal, the velvet portfolio, the blue-and-gold cord and tassels, the box, and other accessories, the total cost may have amounted to about $1,400 (the estimate of $2,500 in Totten, Seal of History, I, 164, is doubtless excessive).

By Article 12 of the treaty the time allowed for the exchange of ratifications was eighteen months from signature, or until September 30, 1855. The place of exchange (necessarily in Japan) is not stated.

On, or perhaps just before, September 23, 1854, Commander Henry A. Adams, U.S.N., was directed by the Secretary of the Navy to report to Secretary of State Marcy for special duty (D.S., Miscellaneous Letters, September–October 1854, Dobbin to Marcy, September 23, 1854). The following instructions were written by the Secretary of State, respectively to Commander Adams and to the Commander of the United States Squadron in the East Indies (D.S., 3 Special Missions, 62, 64–65):

DEPARTMENT OF STATE,
Washington, September 22, 1854.

To Commander HENRY A. ADAMS,
of the Navy of the United States.

SIR: Herewith you will receive a trunk containing the President's ratification of the Treaty with Japan and a power [1] for that purpose, in regard to which this Department has requested the Secretary of the Navy to give you further orders. Subject to those orders you will proceed to the East by the overland route. Your reasonable travelling expenses will be allowed you. Of these you will keep an accurate account which must be supported by vouchers in every instance where they can be obtained. The sum of one thousand dollars is herewith advanced to you on account, and you are authorized to draw on this Department for such further sum as may be necessary to enable you to fulfil this instruction.

I am, Sir, very respectfully,
your obedient servant,

W. L. MARCY.

DEPARTMENT OF STATE,
Washington, September 23, 1854.

To the COMMANDER OF THE UNITED STATES SQUADRON, IN THE EAST INDIES.

SIR: I transmit the President's ratification of the Treaty with Japan, to be exchanged for the ratification of that Empire. A power to effect the exchange is also herewith transmitted. In consequence of the uncertainties attendant upon communicating with you at so great a distance, and the disturbed condition of that quarter of the globe, the name of the person to execute the power has not been inserted therein, but is left to your best discretion, with the following suggestion. As Commander Adams has been made the bearer of the Treaty, there would seem to be a propriety in deputing him to exchange the ratifications. His name would have been inserted here in the power, but for the consideration above suggested. The power is left in blank, and you are vested with authority to fill it, to guard against the contingency of his not being able to perform the duty of making the exchange.

[1] No record copy of this full power, which was made out "in blank", has been found.

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A draft of a certificate[1] is also enclosed, which must be executed in duplicate by the persons who may make the exchange on the part of the two governments. One of the copies of the certificate must accompany the Japanese ratification, which must be sent to this Department, by some trustworthy person, as soon as may be practicable after that ceremony shall have taken place. As it is possible, however, that the person to whom it may be entrusted may be retarded on his way hither, it is desirable that this Department should be informed by a letter in duplicate, each copy to be sent by a different conveyance, of the fact and of the date of the exchange, in order that the President may proclaim the Treaty without unnecessary delay.

For any reasonable expense which you may incur in complying with this instruction, including the employment of an interpreter, you will be reimbursed by this Department upon presenting your account therefor, which must be supported by such vouchers as you may be able to obtain.

I am, Sir, respectfully,
Your obedient servant,

W. L. MARCY.

At the same time the Secretary of State wrote this letter to the Secretary of the Navy (*ibid.*, 62–64):

DEPARTMENT OF STATE,
Washington, September 23, 1854.

To the Hon: J. C. DOBBIN—
Secretary of the Navy.

SIR:—Commander Henry A. Adams has been selected by this Department to take to the East the President's ratification of the Treaty with Japan. I have accordingly entrusted him with the ratification, and also with a power to effect the exchange. The name of the person to make the exchange on our part has not been inserted in the power. I have requested the officer in command of the Squadron on the China Station to fill in the name of the person whom he shall find it convenient to send to Japan for that purpose. Commander Adams would, I believe, like to be designated for that service, but I have not inserted his name in the power because something might occur to prevent him from performing that duty. The communication from this Department leaves the selection of the person to the Commander of our Squadron in that quarter. It is hoped no time will be lost after the arrival of Commander Adams in China with the Treaty, in sending it, as is proposed, to the government of Japan.

It will of course be necessary that you should order a vessel of war of the United States to take the person thus selected to Japan. A sealed packet containing his instructions is herewith transmitted. I will thank you to deliver or transmit it to Commander Adams with any orders which you may give him.

I have the honor to be, Sir, very respectfully,
Your obedient servant,

W. L. MARCY.

This order of the Navy Department was borne by Commander Adams (Naval Records and Library, Confidential Letters, No. 3, p. 206):

[1] This draft became the original certificate of exchange which is now in the treaty file. The body of that certificate (reproduced in facsimile on page 655) is in the handwriting of Robert S. Chilton (cf. D.S., Miscellaneous Letters, May 4, 1855). Chilton was appointed (from New York) clerk in the Department of State January 1, 1852; from February 2, 1871, he served as consul at various posts and as commercial agent; he resigned to take effect January 1, 1902, just fifty years after his first appointment; and he died in Washington, D.C., May 18, 1911.

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NAVY DEPARTMENT
September 28th 1854.

SIR, This will be handed to you by Commander H. Adams U.S. Navy, who is the bearer of the ratification of the Treaty between this Government and Japan.

Commander Adams will also deliver to you a letter from the State Department, and when the blank is filled up, you will afford every facility to the person whose name is inserted, to accomplish the object therein referred to, by despatching the Powhatan to Japan for that purpose.

I transmit, herewith, Copy of a letter from the State to this Department, which will exhibit the views of the Secretary of State on the subject of filling up the blank.

I am respectfully
Your Obd't Serv't

J. C. DOBBIN

To the COMMANDING OFFICER OF THE U. STATES SQUADRON
East India & China Seas

Commander Adams arrived at Hong Kong on January 1, 1855, and a few days later received the following order from Commodore Joel Abbot, U.S.N. (D.S., 19 Special Agents):

U.S. FLAG SHIP MACEDONIAN
Whampoa, China Jany 9th 1855

SIR You have been appointed to exchange ratifications of the treaty made with the Empire of Japan. You will be conveyed to the Port of Simoda in the U.S. Steamer "Powhatan". Captain M°Cluney will have instructions to afford you every facility for the accomplishment of the object of your mission in a suitable manner. After the exchange of ratifications has been made you will proceed in the Powhatan to Shanghai, when you will take passage in the U.S. Ship Vandalia for Hong Kong. On your arrival at Hong Kong you will report to me in person. But if in consequence of my absence, or the immediate departure of the overland mail you are unable to do so, you will communicate with me by letter enclosing a certificate of the exchange of ratifications; and in either case you will proceed by the first opportunity of the overland mail to the U. States, and deliver the Japanese ratification in person to the Secretary of State at Washington.

I am Sir very respectfully
your obt. servt.

(Signed) JOEL ABBOT
Commander in Chief U.S. Naval Forces in East India and China Seas &c.

To Commander H. A. ADAMS

This despatch of Commodore Abbot, noted as received on June 21, 1855, brought to the Department of State the first direct news[1] of the exchange of ratifications at Shimoda on the previous February 21 (*ibid*):

U.S. SHIP MACEDONIAN
Hong Kong, April 3d 1855

SIR, I have the honor to inform you that ratifications of the Treaty with the Empire of Japan were exchanged at Simoda on the 21st of February last. Commander H. A. Adams of the Navy whose name was inserted by me in the power transmitted from the Department of State for that purpose, has recently arrived

[1] Report that the exchange had taken place was published at The Hague in the Nederlandsche Staats-Courant, No. 105, of May 3, 1855; but no mention of this was made in despatches of the time from The Hague. The New York Herald of May 8, 1855, p. 1, reported that "The ratification of the American treaty with Japan was concluded at Simoda, February 21"; and the issue of May 28, 1855, pp. 1–2, included an account of the visit of the *Powhatan* to Japan.

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at this place, and I have directed him to return to the U. States by the Overland route. He will start on the 15th inst bearing with him the Japanese ratification, and also a certificate of the exchange signed by the Commissioners on both parts. I retain a duplicate of this certificate for your further instructions.

I have the honor to be, Very Respectfully
Your Obt Servant

JOEL ABBOT.
Commdg U.S. Squadron East India & China Seas.

To, The Hon: Wm L. MARCY
Secretary of State
Washington, D.C.

Proclamation of the treaty was made on June 22, 1855, the day following the receipt at the Department of State of the foregoing report of Commodore Abbot. The original proclamation in the treaty file reads thus:

By the President of the United States of America.

A PROCLAMATION.

Whereas a Treaty of peace and amity between the United States of America and the Empire of Japan was concluded and signed between their Plenipotentiaries at Kanagawa on the thirty-first day of March in the year of Our Lord one thousand eight hundred and fifty-four, the original of which Treaty is hereto annexed:

And whereas the said Treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Simoda on the 21st of February, last, by Commander H. A. Adams of the United States Navy and Ido Tsocsima, Nokami, Isawa Mimasaki, Nokami, Tsococki Socroega, Nakami, Ido Towsé, Kokahien Itsilo, with Tasnoske for Interpreter,[1] on the part of their respective governments:

Now therefore be it known that I, Franklin Pierce, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-second day of June in
[Seal] the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the seventy-ninth.

FRANKLIN PIERCE

By the President:
W. L. MARCY. *Secretary of State.*

The second recital of the original proclamation is written over erasures, and about a moiety of it runs out into the margin of the paper. As first written, that paragraph of the proclamation must have been in a simpler form. On June 22, when the proclamation issued, the only information regarding the exchange which was available to the Department of State was in the report of Commodore Abbot received the previous day; and the second paragraph of the

[1] Miss Shio Sakanishi, of the Library of Congress, writes that the names of the five Japanese Commissioners were Ido Tsushima-no-kami, Izawa Mimasaku-no-kami, Tsuzuki Suruga-no-kami, Matsumoto Jurobei, and Koga Kinichiro, and that of the interpreter, Hori Tatsunosuke. Compare the names as printed in the letter of Commander Adams of July 9, 1855 (Narrative, II, 201–10, at p. 205, quoted below). Only the first three of the Commissioners signed the certificate of exchange of ratifications (reproduced below in facsimile).

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proclamation, as it now reads, could not have been written from that report. The alteration of the proclamation (not done with complete success) doubtless took place after the arrival of Commander Adams in Washington on June 25, the Monday following the date of proclamation.[1] Commander Adams then delivered the Japanese instrument of ratification, the certificate of exchange,[2] and other papers, as stated in this report to the Secretary of State (D.S., 19 Special Agents):

WASHINGTON *June 25th 1855*

SIR I have the honor to deliver herewith the Japanese ratification of the treaty made by Commodore Perry on the part of the United States at Kanagawa on the 31st of March 1854. The exchange of ratifications was made at Simoda on the 21st of Febr last, with due form, and according to the certificate herewith enclosed. On this occasion I appeared as Commissioner for the United States, my name having been inserted by the commanding naval officer of the East India Squadron in the blank left for that purpose in the power signed by the President. I hand you also a ratified copy of some supplementary articles made by Commo. Perry to the treaty after it's signature at Kanagawa, with a request from the Japanese Government that the ratification of these articles by the U.S. government may be sent to Japan as soon after it is completed as may be convenient. I enclose also a copy of the orders from Commo. Abbot under which I acted.

I am very respectfully your obt. servt

H. A. ADAMS
Commdr U.S. Navy

The Honorable Wm L. MARCY
Secretary of State
Washington

Two weeks later Commander Adams wrote to Commodore Perry a detailed report of his proceedings; therein he recounted the difficulties that arose before the exchange took place. The United States instrument of ratification included the English version of the treaty only; Commander Adams did not have with him a copy of the Japanese, and, moreover, he did not have either official translation, the Chinese or the Netherlandish. He was accompanied from Hong Kong by an interpreter who appears to have been skilled in the two languages last mentioned. When Commander Adams arrived at Shimoda on January 26, 1855, negotiations were in progress for a treaty between Japan and Russia, which was signed twelve days later (see 57 British and Foreign State Papers, 1054–57). On the day of his arrival Commander Adams had written to the Chief of the Rochu at Yedo, Abe Ise-no-kami, informing him thereof. The Governor of Shimoda was Izawa Mimasaku-no-kami, one of the Commissioners who had signed Perry's Treaty on behalf of Japan and also one of the Commissioners for the exchange of ratifications; there were preliminary discussions of the procedure with him, with "an officer of rank and man of learning" from Yedo, Kirayama

[1] In its altered form the proclamation was printed in the usual contemporary pamphlet print of the Department of State (D.S., 19 Special Agents), and in the same form it appeared in the Daily National Intelligencer of Thursday, June 28, 1855, p. 2.

[2] A facsimile reproduction of the certificate, somewhat reduced, is on page 655.

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Kenjiro, and with the Lieutenant Governor of Shimoda, Kurokawa Kahei.

On February 13 Commander Adams met the five Japanese Commissioners (only the first three of whom signed the certificate of exchange). The problem of text which had arisen was solved by acceptance of the correctness of the English version, according to which (Article 12) the exchange of ratifications was to take place "within eighteen months". The Japanese officials had thought that this was "after eighteen months"; but each of the concurrent official translations, Chinese and Netherlandish, was found to support the English. Strong objections were raised by the Japanese Commissioners to the signature of the Japanese ratification by the Shogun (called "Emperor" in the report); Commander Adams insisted that the "Emperor" must sign, as the President had; but while Commander Adams believed that he had carried his point, the Japanese instrument of ratification which he accepted bears neither signature nor seal of the Shogun.

On February 20 a very interesting communication was received from the Japanese Commissioners, written in Netherlandish, regarding the title properly to be used for the Shogun in state papers and the necessity for the signature of the ratification by the six members of the Rochu. The next day the ceremony of exchange took place on shore. The report of Commander Adams to Commodore Perry follows (Narrative, II, 201–10):

PHILADELPHIA, *July 9, 1855.*

SIR: In the belief that an account of my proceedings since I left your immediate command in April, 1854, may be acceptable, I will offer you a statement in detail which will include an account of the exchange of ratifications of the treaty with the Emperor of Japan. Agreeably to your orders I sailed from Yedo bay on the 4th of April, 1854, in the Saratoga, Commander Walker, carrying with me the treaty you had just concluded. We reached Honolulu on the 1st of May, where I took the first vessel that offered for San Francisco, whence I started by the mail route via Panama for New York and Washington, and reached the seat of government on the 12th of July. The news of the treaty was received with much pleasure, and obtained the immediate and unanimous approval of the Senate. The ratified copy of the treaty was intrusted to me to carry out to China, and subsequently to Japan. I left New York on the 30th of September, and arrived, by the English overland route,[1] at Hong Kong on the 1st of January, 1855. Commodore Abbot, in accordance with instructions from the Navy Department, gave orders to Captain McCluney to convey me in the Powhatan to Simoda, where we arrived on the 26th of January. At Hong Kong I had engaged a very intelligent gentleman, Mr. Wilhelm Lobscheid, to act as interpreter. On my arrival I addressed the following letter to the chief of the supreme council, which I sent by an officer of the governor of Simoda, requesting him to forward it immediately to Yedo.

[1] The overland route to Hong Kong from London was via the Mediterranean to Alexandria and Cairo, thence "overland" to Suez, and the rest of the way by sea. Perry wrote that the "usual time occupied in transporting the mail from England to Hong Kong, via Marseilles, (the shortest route,) is from forty-five to forty-eight days" (Narrative, I, 212); it was by this route that Robert M. McLane journeyed in 1854, taking twelve hours for the "overland" travel by omnibus from Cairo and twenty days from Suez to Hong Kong (McLane, Reminiscences, 128). Formerly the "overland route" had meant the route to India via the Mediterranean and overland from its eastern shore to the Persian Gulf.

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The Undersigned, Comm^r M. A. Adams U. S. Navy, Ido Tsoesima, Nokami, Isawa Mimasaka Nokami, and Tsoesoeki Soevoega Nokami certify:-

That having this day met for the purpose of exchanging the ratifications of the Treaty of peace and amity between the United States of America and the Empire of Japan, concluded at Kanagawa, on the thirty-first day of March, last; after due comparison of said ratifications each with the other and with the original of the said Treaty, the said exchange has been effected by them.

In witness whereof, we have hereunto set our hands and affixed our seals at Simoda this 21st day of Feby in the year eighteen hundred and fifty five

M. A. Adams
U. S. Navy

Seal

CERTIFICATE OF EXCHANGE OF RATIFICATIONS OF PERRY'S TREATY

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U.S. SHIP POWHATAN,
Simoda, January 26, 1855.

YOUR EXCELLENCY: I have the honor to acquaint you, for the information of his Majesty the Emperor of Japan, that I have arrived here from the United States of North America, and bring with me a copy of the treaty made by Commodore Perry with the Empire of Japan, which has been approved by the Senate of the United States, and signed by the President. I am furnished with full powers to exchange ratifications agreeably to the 12th article of the treaty, and am ready at any time to meet such high officer as shall be properly authorized for the same purpose by the Japanese government.

I have the honor to be, very respectfully, your obedient servant,

H. A. ADAMS,
Commander U.S. Navy.

His Excellency ABE ISE NOKAMI, *&c., &c., &c., Yedo.*

I gave the following memorandum to the Japanese interpreter, Mr. Lobscheid, explaining for his information each paragraph separately.

MEMORANDUM.

It is provided by the 12th article of the treaty that ratified copies shall be exchanged within eighteen months after the day on which it was signed at Ka-na-ga-wa by Commodore Perry and the Japanese commissioners. I have brought a copy for this purpose, approved by the Senate of the United States and signed by the President. I wish to deliver this to some person of the highest rank who shall be appointed by the Emperor to receive it, and to deliver to me in return a copy in the Japanese language, approved and signed in the same manner by the Emperor.

As I have a special power for this purpose, which I will deliver with the treaty to the high officer appointed to exchange ratifications, I shall expect that high officer to have the same authority in writing from the Emperor, which he will deliver to me at the same time. This is in accordance with the usage of nations.

It is desirable that the exchange shall be made as soon as possible, as I wish to return with the Japanese copy immediately to the United States. I am ready to proceed for this purpose to Yedo, if it is agreeable to the government of Japan; or to make the exchange in proper form on board the United States ship Powhatan, as soon as the Japanese commissioner is ready.

The Japanese copy of the treaty is to have the seal and signature of the Emperor attached to it, in like manner as the seal and signature of the President of the United States are affixed to the copy which I bring.

It will be necessary to have the original treaty at hand when the ratifications are exchanged, in order to compare it with the copies, and see they all agree.

When the exchange is made, the commissioners will sign two certificates of the fact, to be transmitted to the President of the United States.

The Japanese officer who boarded the ship informed us that the town of Simoda had been totally destroyed by the effects of an earthquake on the 23d of December. The Russian frigate Diana, which was lying here at the time, received so much injury that she subsequently foundered. I will subjoin to this communication a full account of this calamity.

On the 29th January I paid a visit of ceremony to the governor of Simoda. I found him to be Isawa Mimasaki Nokami, who had been one of the commissioners for making the treaty. He received me in a temple situated on an eminence, which seemed to have escaped serious damage from the earthquake. He stated, in the course of conversation, that the Japanese government would not be prepared to exchange ratifications at this time, as by the treaty this was not to be done until eighteen months had elapsed from the time it was made. I told him this was a mistake, and referred him to the 12th article of the treaty

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itself, which says, "within eighteen months, or sooner if practicable." Before leaving him I expressed a hope that he would do all in his power to forward the business, which he promised he would. He said it would require six days to send a letter to Yedo and get an answer back.

On the 4th of February I received a message from the governor, saying that letters had come from Yedo, and inviting me to a conference on shore. I went accordingly. After the usual compliments, and an expression of regret at the delay I was subjected to, which he said was partly owing to the destruction of the place by the earthquake, and partly to their press of business with the Russians, who were here negotiating a treaty, he began to state other difficulties which stood in the way of immediate exchange of ratifications. In the first place, he asked if I had brought a Dutch translation of the treaty, and being told I had not, he said it would then be impossible to proceed, as they did not understand English. To this I replied that we were in similar circumstances, as none of us understood Japanese; that I had brought a copy of the treaty in English, signed and sealed by the President of the United States, and all I required in return was a copy in Japanese, signed and sealed by the Emperor. I added that they had already translations of the treaty both in Dutch and Chinese, which had been carefully compared, both by their own interpreters and ours, when the treaty was made at Kanagawa, and moreover, that their interpreter, Moryama Yenoske, who assisted at making and translating the treaty, was now at Simoda, and understood English sufficiently to compare the ratified copy with the original, and to see that they were word for word the same. I requested him to send to Yedo for a Dutch translation. He said he had done so already. Our conversation was carried on in this manner.

Captain A. How long will it be before it arrives, and you are ready to finish this business?

Governor. I cannot give a decided answer to this.

Captain A. I wish to have a definite answer. I consider the ship in danger here, from the insecurity of the harbor and the frequent earthquakes. Captain McCluney is also very uneasy, and it is important I should know as soon as possible whether the Japanese government is willing to act in accordance with the 12th article of the treaty or not. If I am to be kept waiting long, I must request Captain McCluney to take the ship high up in Yedo bay, where she will be safe, and where the communication with Yedo can be so much shorter.

Governor. They are willing to do everything according to the treaty. But one thing must be mentioned. It is impossible the Emperor's name should be to it. He never signs anything; it is contrary to the custom of Japan.

Captain A. It must be signed by the Emperor, "the august sovereign," or the person who holds the supreme power in Japan, by whatever name he is called.

Governor then says repeatedly that only the commissioners who would be appointed to exchange ratifications and the chief of the supreme council could sign it.

Captain A. I cannot consent to this, nor make any exchange under such circumstances. The copy I bring is signed by the President of the United States, and I will not accept in exchange for it anything less than the signature of the Emperor himself.

Governor here goes into a long explanation to show that the sovereign power is really in the hands of the supreme council, and that the Emperor has nothing to do with affairs of this kind.

Captain A. That may be so; but as the Emperor's name only is used in the treaty, I can recognize no other authority.

Governor. Have you seen the supplementary articles made to the treaty by Commodore Perry at Simoda?

Captain A. I have heard of them, but never seen them.

Governor. It is agreed by them that the commissioners only shall sign the ratifications.[1]

Captain A. I would like to see these articles, but they could not govern me in this case. I wish to know distinctly whether the Japanese government is willing to comply with the stipulations of the 12th article of the treaty or not; and if not, that the chief of the supreme council will please state the reasons in

[1] See the rather obscure wording of Article 12 of the Additional Regulations, printed above.

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writing, in order that I may lay them before my own government. Among western nations such a denial would be considered a great affront.

Governor. All will be done according to the treaty. Commissioners will be sent here to meet you, and exchange ratifications. I have sent for a Dutch translation of the treaty that we may see exactly how it reads.

Captain A. Unless I can hear, in the course of five or six days, that the commissioners are coming, a regard for the safety of the ship will make it necessary to move her up Yedo bay to some safe anchorage.

Governor. Everything will be done quickly. Will you be good enough to give me an English copy of the treaty.

Captain A. Not at present.[1] After the ratifications are exchanged, I will have a copy made for you with great pleasure.

Here the interview terminated with the usual compliments on both sides. On the 9th of February, Hirajama Kanziro, an officer of rank and man of learning, arrived from Yedo. He came on board the Powhatan to see me, and announced that the commissioners were on their way to Simoda, and might be expected in three or four days. He said the Japanese were totally unused to treaty making, and ignorant of the proper forms. I explained everything to him, assuring him that by following my directions they would not go wrong, as everything would be done in accordance with the practice of western nations. Kanziro had three scribes with him, who put down all I said in writing. I gave him a memorandum, in which I stated among other things that no preparation was necessary for the exchange of ratifications except a comparison with the originals, which would be made by the interpreters in the presence of the Japanese commissioners and myself, and that I hoped they would conclude the business as soon as possible. An accident, similar to the one that caused the loss of the Diana, might befall this ship if we remained here. We had felt several heavy earthquake shocks since we had been in port; and during a gale two days since we were obliged to get up steam to prevent the ship from going ashore. She was dragging on the rocks, with three anchors down. There was no holding ground; and that if he had not assured me the commissioners were coming, the ship would this day be on her way towards Yedo, to find a secure anchorage, and wait for the action of the Japanese government. On the 12th of February, Kura-kawa Kahei, lieutenant governor of Simoda, came on board, when, after the usual compliments, the following conversation took place:

Lieutenant Governor. One of the commissioners arrived last night.

Captain A. When may the others be expected?

Lieutenant Governor. I have to come to speak on that subject. The original Japanese version of the treaty reads that ratifications of the treaty shall not be exchanged until eighteen months have elapsed. It will be compared with the Dutch and the English original. It is perhaps the fault of the interpreters. The commissioner who has arrived would be glad to see Captain Adams on shore to-morrow, to compare the originals and translations.

Captain A. In case the comparisons are satisfactory, is the commissioner authorized and prepared to make the exchange of ratifications immediately?

Lieutenant Governor. It will be done very soon, but I cannot say in how many days. The commissioner has the ratified copy with him; but, in consequence of the difference between the original and the translation, it will be necessary to refer again to Yedo.

Captain A. I have prepared a letter to the prime minister, which, however, I will not send until after my interview with the commissioner to-morrow. I do not like this procrastination, and cannot remain here much longer. Captain McCluney has given a large part of his provisions to the Russians; and we may be in want ourselves if we are delayed for any time.

Lieutenant Governor. We do not understand English, and wish you to give us a Dutch translation of the treaty.

Captain A. I cannot do that. You have already a Dutch translation, which was made and carefully compared with the treaty at Kanagawa.

Lieutenant Governor. We do not understand the meaning of the word "within".

[1] This refusal was reasonless. The Japanese Government had three originals of the English version of the treaty; delivery of a copy by Commander Adams could have done no more than save the trouble of sending to Yedo for one.

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The meaning of this word was here explained in Dutch and Chinese by Mr. Lobscheid. The difficulty about the signature of the Emperor was resumed by Kurakawa Kahei. He wished to know whether the ratification should not be signed by the high government authorities; they were the proper persons, &c., &c. I told him very shortly, that, as I had often said before, according to the 12th article of the treaty, the ratifications were to be signed by the President of the United States and the august sovereign of Japan, and that I would not accept anything less than the name of the august sovereign of Japan, whoever he might be, inasmuch as the President of the United States had signed the ratification himself.

Lieutenant Governor. The Emperor does not rule in Japan. The government is conducted by a supreme council, and the chief of the council is the head of the government. He performs all duties.

Captain A. I have heard this before. Why, then, was the Emperor's name inserted in the original treaty? Why not the prime minister? Now the Emperor must sign the treaty. It is useless to discuss the matter any further at present.

Lieutenant Governor. Here is a bundle of religious books, left in Simoda by "Bittinger." This is contrary to Japanese law, and is not right. The governor has had them all collected, and begs you will receive them, and carry them away to America.

Captain A. I will take them. To-morrow I will wait on the commissioner.

The next day, February 13th, I went on shore to the house of the governor, accompanied by Lieutenant Pegram, Purser Eldridge, Mr. Lobscheid, and Mr. Craig, Captain McCluney's clerk, who was to take notes of the conversation. I found the commissioners had all arrived, and were in readiness to receive me. Their names were: *Ido-Tsu-Sima Nokami, Isawa Mimasaki, Nokami, Tsoesocki Soeroega Nokami, Matsmotu Dzulo,* and *Koka kin Idsero,* with Tatsenoske for chief interpreter. After an exchange of salutations, compliments, &c.,

Captain A. Have the commissioners brought the original treaty with them from Yedo?

Commissioners. We have brought them for comparison; the same that were written at Ka-na-ga-wa last year.

These copies were now produced, and the ratified copy brought by me carefully compared with the Dutch translation. After the reading was done:

Captain A. You have heard it now, is it all right?

Commissioners. All is right; but our understanding was that the exchange should not take place for eighteen months. The fault of the delay was on our part, not yours; another excuse for us is, that we have been very busy with the Russians.

Captain A. Since the American copy is found to be all right, if you have the Japanese ratification, we will now compare that with the Dutch translation.

Commissioners. We have here the original, which was made last year. We wish to compare that.

The Japanese original was then produced, and carefully compared with the Dutch translation. They were found to differ, the Japanese averring that in their language it read "after eighteen months."

Captain A. Have you the Chinese copy? We will examine that.

The Chinese copy was examined and found to agree in substance with the English and Dutch.

Captain A. You perceive that the Japanese copy is the only one that differs from the others. That was made by your own interpreters. Ours did not understand Japanese, and as the original was made in English, any difference from it in the translation must be wrong.

Commissioners. Yes, that is undeniable, the error is ours.

Captain A. Now, I would like to see the Japanese ratification, that I may know how it is signed.

Commissioners. It is not here. On finding that it differed from the English, it was sent back to Yedo.

The objections to the Emperor signing the ratification were now renewed in the strongest and most formal manner. The former assertions made on the subject were repeated over and over. The discussion lasted three or four hours. I did not recede, but insisted that it should be signed by the Emperor "Kubo," august

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sovereign, or person of the highest station in the empire, by whatever name or title he was known; one whose authority could never be called in question; and I further said, that as they declared the power of making and ratifying treaties, and doing similar acts, was vested in the supreme council, it would be necessary and proper for them to sign it also, and pointed out to them, that the American ratification bore the signature of the Secretary of State in addition to that of the President. By this time I had learned that the ratification they had brought down with them, was without the signature of the Emperor. I now had the following note translated into Dutch and handed to them.

"It appears that the ratification of the treaty brought by you from Yedo was not signed by the Emperor, or august sovereign, as it should be according to the 12th article of the treaty. Therefore it will be impossible for me to receive it in exchange for the one brought by me from the United States signed and sealed by the President. I will prepare a letter to Abe Ise Nokami, and send it to the governor by an officer; and I beg the favor of him to forward it immediately to Yedo. In a case so unexpected as this, it is my duty to inform the President of the United States as soon as possible, that he may take such measures as he shall think necessary for the honor and dignity of the country." The commissioners begged leave to retire with this note for consultation. They returned after about fifteen minutes absence.

Commissioners. We have agreed that the Emperor's name shall be to the treaty. The prime minister will sign it by his authority.

Captain A. It wont do. The President of the United States put his name to the treaty, and the Emperor must do the same.

Commissioners. We have no great seal like yours.

Captain A. That is unnecessary. If you have any mark or sign which is put by the government on public papers to show that they are authentic, such a mark will be sufficient.

Commissioners. We have such a sign.

The Japanese after some private conversation among themselves now said that, in order to avoid misunderstanding and preserve friendship, everything should be done as I desired, and engaged to have the signatures of the Emperor and supreme council affixed to the treaty in the place and manner prescribed by me. A form was made out by them, and submitted to me for examination.

Captain A. This is all right. I will keep this to compare it with the treaty when it arrives, to prevent mistakes or misunderstandings. How soon will you be ready?

Commissioners. In eight days.

Captain A. I cannot wait so long. It must be sooner.

The Japanese here stated that in three days from this their new year commenced,[1] which was a season of rejoicing, visiting, and festivity; and both by law and custom no work was done for several days at this period. They persisted so earnestly in this, that I consented at last to wait seven days. On the 20th of February, the lieutenant governor came off to the ship, attended as usual. After an exchange of compliments:

Captain A. I hope you have come to say that everything is prepared on shore.

Lieutenant Governor. We wish to speak on that subject. Immediately after the last interview the commissioners wrote to Yedo to have the ratification signed in the form agreed on. The ratified copy has come from Yedo. We have brought it for your examination, and also a letter from the chief commissioner explaining the proper title of the Emperor when used in great matters.

(Mr. Lobscheid had always used the word Kubo, in his translations, as an equivalent for Emperor.)

The letter.

The commissioners have, as much as was in their power, and as distinctly as possible, written to Yedo about everything that was agreed on at the meeting recently held in the temple of Tsio Lakzi, translated by Lobscheid,

[1] The second year of Ansei commenced on February 17, 1855 (Bramsen, *op. cit.*, 124–25).

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and the commissioner Idsero, in order that all affairs, each word, and each line, might be fulfilled according to promise. Further, about the conclusion of the treaty, we have to-day received the following document from the supreme council at Yedo:

"The reason of this is—that though his excellency, Adams, wishes to have the word 'Kubo' written, the government, after consultation, finds this word improper, because the word 'kubo' is with us only used by the common people; and that, in so important a document as the stipulations of the treaty, and such like, always *Tai-Koen* [1] is written, which is in accordance with Japanese usage; and especially should this title, 'Grand Lord,' or 'August Sovereign,' be written in a public document which is to be sent to a foreign country and faithfully kept till in eternal life. In such a document, the word 'kubo,' as a common or vulgar word, may never be written. Also in the letters which are sent from Corea to Japan, and from Japan to Corea, the word '*Tai-Koen*,' has been used for many hundred years. Therefore, according to the old usage, the word '*Tai-Koen*' is used in the confirmation of the treaty, not only because it is becoming to do so, but because it would be impolite to insert a word used only by the common people in a document on a level with his Majesty the President of the United States' signature, written with his own hand. The above mentioned will be well known to his excellency, Adams, if he remembers the Japanese usage of last year. But should he not remember this, or the high officers of the United States doubt it, then the plenipotentiaries Ido-Tsu-Sima, Isawa Mimasaki, Tsoesocki Soeroega, Matzmoto Dzulo, and Hokakin Idsero, will sign a declaration to that effect to remove all doubt. The word command or order, signifies what proceeds from the grand lord to his subjects. He assembles his subjects and verbally communicates to them. Thus it speaks for itself that in such a case he has also the power to enforce the obedience of his subjects. Hitherto, in important documents, by or through authority, the words, power and order are used, which express the above meaning. The confirmation of the treaty is also signed by the six supreme councillors, as desired by his excellency, Adams, and with this reason, because all political affairs, be they large or small, must be done by these persons, who, in all affairs of the government, must meet at the same time, and in all councils and affairs of state must sit in the same chamber. Therefore, in all home affairs, as well as those that have reference to foreign countries, the names of all persons are written. So it has hitherto been the case in those documents sent to Russia or Holland. Thus, according to our old usage, this will also be strictly observed. If only one name was written in the confirmation of the treaty, which, as an important document, will be kept till eternal life, it would be contrary to Japanese custom, and besides, impolite to the United States. All this is written after the council of the government, and sent with the confirmation of the treaty. In order to prevent any mistake in the interpretation, this has been written in Dutch.

IDO-TSU-SIMA NOKAMI.

After reading this letter, which was translated by Mr. Lobscheid, I asked to see the ratified treaty which the lieutenant governor had brought off with him. It bore the signature and seal of Tai-Koen, in full, with a column of Japanese characters adjoining it, expressing, as was explained to me, his power and dignity.[2] It bore also the seals and signatures of the six supreme councillors, in a lower place.

Captain A. This letter and the signatures to the treaty are all quite satisfactory. Will the commissioners be ready to conclude the business to-morrow morning?

Lieutenant Governor. Yes, they will. We wish further to say that the commissioners have received from Yedo a ratified copy of the supplementary articles to the treaty of Kanagawa, which were added by Commodore Perry last year at Simoda, and we wish to know if you will receive and carry it to the United States. When these supplementary articles are also confirmed by the American government, the ratification can be sent out by some ship coming to Japan.

[1] Taikun; the Shogun.

[2] Commander Adams was mistaken here. The Japanese instrument of ratification does not bear either signature or seal of the Shogun.

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Captain A. Yes, I agree to do this.

Lieutenant Governor. On this important occasion the Japanese wish to give a proof of their good will and friendship towards the Americans. They therefore request that the ratifications may be exchanged on shore, where they are preparing an entertainment, and where they have arranged some trifling presents for the captain and officers of the ship.

Captain A. By whom are these presents offered? Do they come from the Emperor or the government?

Lieutenant Governor. No. They are offered by the commissioners.

Captain A. I must be perfectly assured on that point. By the laws of our country, officers are forbidden to accept presents from the governments of other countries.

Lieutenant Governor. We are aware of that; we were told so by Commodore Perry. But these are not from the Emperor nor the supreme council, nor the government in any way. They are only a few trifles from the commissioners for the captain and officers of the ship, in return for the books and other valuable things given to them, of which they beg your acceptance as old friends.

The next day, February 21st, a Japanese officer came off to the ship, and announced that the commissioners were ready at the temple to receive me. I went on shore immediately, attended by as many officers of the Powhatan as could be spared from duty. The treaty was carried by sailors, with the United States flag flying over it. On my arrival at the temple, after the compliments of reception, we were shown, according to the custom of Japan, the presents intended for the captain and officers of the Powhatan. They consisted of some pretty specimens of lacquered ware. Three or four pieces were for myself. The treaties on both sides were then produced and carefully examined; and after receiving the formal assurance of the commissioners that the seal and signature of the Tai-Koen and supreme council were genuine and authentic, and finding everything else right, the exchange was made in due form. This was immediately communicated to Captain McCluney, on board the Powhatan, who fired a salute of seventeen guns, with the Japanese flag at the fore. We then sat down to the feast they had prepared for us, where we drank, in many cups of sakee, to the eternal friendship of the two countries. The commissioners accepted an invitation from me to visit the Powhatan, and I went on board to receive them. They came off in about an hour after me, attended by a large suite of officers, interpreters, and servants. They were received with a salute of thirteen guns, and were entertained in the cabin and wardroom. About sunset, they left the ship in high spirits, and apparently much delighted with their visit. A parting salute of thirteen guns was given them. The next morning we left Simoda in the Powhatan for Shanghai.

Notwithstanding the delay in perfecting the treaty, I found the Japanese during my visit much more disposed to be friendly and sociable than formerly. Our officers roamed where they pleased over the country and the villages, and were welcomed everywhere. There was no attempt to watch or follow them. A bazaar was opened in a temple at the foot of the hills and filled with articles of Japanese manufacture, brought from Yedo and other places. We were not only invited but absolutely importuned to buy. At the interviews I had with the governor and commissioners on shore everything was conducted as at the making of the treaty at Ka-na-ga-wa. The hall was fitted up in the same manner, the entertainments the same, and the inferior officers and interpreters who were present always remained upon their knees, as on that occasion. During all the time of our stay, except when conferences were held on shore, I was visited daily by the lieutenant governor or some officer of high rank. An anxious wish was expressed by these people that trading vessels from America would soon begin to visit them, and the governor of Simoda intimated to me that it would be very agreeable to him personally if a consul from the United States should be appointed to reside at Simoda. They were eager to obtain books on medical or scientific subjects, and many valuable works were presented to them by Dr. Maxwell and others. Indeed, they were glad to receive books on any subject except religion. They told me they had learned how to manage the locomotive engine sent to the Emperor by the United States government, but the magnetic telegraph was too hard for them.

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The Russian Admiral Pontiatin concluded a treaty [1] with them while I was there. He informed me that the terms of it were precisely the same as of that made with the United States, except that the Russians get the port of Nangasaki instead of Napa-Keang.[2]

During our stay at Simoda a French ship arrived and anchored in the outer harbor, having on board two Japanese seamen, who had been taken off the wreck of a junk about three years previously by an American whale ship. The Japanese authorities ordered the vessel off, would permit none of their people to go on board of her, and positively refused to receive the shipwrecked men. They had, they said, no treaty with France, and French vessels had no right to come there under any pretext. At the intercession, however, of Captain McCluney and myself, they agreed they would receive these men from the Powhatan, if Captain McCluney would first take them on board the ship, and then deliver them as coming from an American man-of-war. This was done. They were kept all night on board the Powhatan, and landed at Simoda next morning. They were immediately compelled to shave their heads and resume their national costume, and were placed under strict surveillance, where they remained when we came away.

I could learn no more of the political condition of Japan than what is contained in the positive assertions of the commissioners respecting the power of the supreme council.

The earthquake which I have referred to in the previous pages occurred on the 23d of December, 1854. Its effects were most calamitous. Every house and building on the low grounds was destroyed; a few temples and edifices standing on elevations alone escaped. The destruction was not caused by the agitation of the earth, but by the overflowing of the sea which followed the shocks. The Japanese say the water in the bay and near the shore was first observed to be violently agitated. It soon began retreating fast, leaving the bottom of the harbor nearly bare, where there was usually five or six fathoms of water. After this it returned in a high wave, overflowing the beach and town up to the tops of the houses, the inhabitants flying to the hills for safety. Numbers were overtaken by the wave and drowned, the accounts varying from 100 to 400. The water receded and returned in this way five times, tearing down houses and temples, and covering the adjacent shores with the wreck of buildings and vessels torn from their anchors. The Russian frigate Diana, carrying the flag of Admiral Pontiatin, was lying in Simoda at the time. The enclosed translation [3] of Mr. Lobscheid from her log-book gives the full particulars of her loss. She foundered near the port of Hido, or Headо, about sixty miles from Simoda. Before leaving Simoda all her guns were landed, and other precautions taken to insure her safety. The officers and crew were all in Japan still when I came away, with no prospect of leaving it soon.

The outlines of Simoda harbor are not altered by the earthquake, but the holding-ground seems to have been entirely washed away, leaving no bottom but naked rocks. The Russian officers say the mud boiled up when the water fell in a thousand springs.

The inhabitants of Simoda appeared to be very little dispirited by their great misfortune; they were busily engaged in clearing away and rebuilding. Stone, timber, thatch, tiles, lime, &c., were coming in from various quarters, and before I came away there were about 200 houses nearly or entirely completed.

It was the 22d of February when the Powhatan left the harbor. After a boisterous passage, we arrived at the mouth of the Yang-tze-kang on the 3d of March, but were prevented by the thick fogs from getting up to Shanghae until the 8th. I left Shanghai in the Vandalia, Commander Pope, on the 14th of March, and arrived at Hong Kong on the 21st. Here I was detained, waiting for the

[1] Signed at Shimoda February 7, 1855; the French version, with explanatory articles, is in 57 British and Foreign State Papers, 1054–57.

[2] The three ports of the Russian treaty are Shimoda, Hakodate, and Nagasaki; only the first two of these are named in Perry's Treaty; Naha is dealt with in the Loochoo Compact (Document 166), which perhaps here is thought of as in effect a supplement to Perry's Treaty.

[3] Not available.

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regular mail day, until the 15th of April, when I left Hong Kong by the English overland route, and arrived in Washington on the 25th of June, where I delivered the Japanese ratification to the honorable Secretary of State.

I am, very respectfully, your obedient servant,

H. A. ADAMS, *United States Navy.*

Commodore M. C. PERRY, *United States Navy.*

DURATION OF PERRY'S TREATY

Commodore Perry had proposed that the treaty should become binding from the exchange of ratifications; but to this delay "insuperable objections were interposed" by the Japanese Commissioners, who remarked that "when signed by them it would be honorably and scrupulously observed by the Imperial Government, and they could see no reason why it should not be so observed by the Government and people of the United States". The clauses of Article 12, and particularly the opening phrase thereof, were written in this sense (see also Article 2, regarding the opening of the port of Shimoda). Commodore Perry acquiesced, "knowing that this course could not have the slightest weight in the practical operation of the treaty" and "that all the concessions agreed to were to come from them" (despatch No. 43, of April 1, 1854, quoted above). The treaty was accordingly deemed by the Government of Japan to be effective from its date of signature; and Commodore Perry, during the month following, insisted that its clauses regarding Shimoda should be duly observed in favor of the American squadron (see Narrative, I, 417–19).

By later agreements, the first of which was the convention of June 17, 1857, the clauses of Perry's Treaty were (by express words or by implication) in large part modified or annulled or replaced by others. By the treaty of July 29, 1858 (Article 12), the provisions of Perry's Treaty in conflict therewith, and also the convention of 1857, were revoked. The convention of January 28, 1864, regarding import duties, was superseded by the convention of June 25, 1866 (see Article 1 of the convention of 1866 and also, as relevant to Perry's Treaty, Article 9 thereof). The convention of July 25, 1878 (Articles 1 and 10), conditionally put an end to the convention of 1866. The convention of May 17, 1880, dealt with shipwreck expenses (cf. Article 3 of Perry's Treaty). Finally, by the treaty of November 22, 1894 (Articles 18 and 19), not only Perry's Treaty in its entirety, but also the agreements of 1858, 1866, 1878, and "all Arrangements and Agreements subsidiary thereto", ceased to be binding on July 17, 1899. (The texts of the seven agreements above mentioned are respectively in 11 Statutes at Large, 723–24; 12 *ibid.*, 1051–68; 14 *ibid.*, 655–56; Malloy, I, 1012–21; 20 Statutes at Large, 797–99; 22 *ibid.*, 815–16; 29 *ibid.*, 848–54.)

COMPENSATION OF COMMODORE PERRY

While on his way home to the United States, Commodore Perry wrote the following letter (received November 17, 1854) to Secretary of State Marcy (D.S., Miscellaneous Letters, September–October 1854):

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ENGLISH MAIL STEAMER HINDOSTAN
Red Sea Oct 14th 1854

SIR On receiving my letter of Credence as Envoy to Japan and final instructions from The Honbl Mr Everett then Secy of State, I made no mention of any Compensation I was to receive for my diplomatic services in Conducting the mission but purposely refrained from any allusion to the subject preferring to wait the termination of the Enterprise, and then to ask for such remuneration as might seem proper and just.

My despatches will show that I have been subjected to much extra labour and expense to the injury of my health and private means, and I now respectfully ask to be placed on a footing with the Commissioner to China with respect to Compensation, *less*, my pay as Commodore of the Navy.

I presume there can be no question as to the equity of my claim for allowance as full Minister for *out* fit, Salary at $9000 and *in*fit less my Naval pay.

My object in writing at this time is to solicit your attention to my claim before the Completion of the Estimates of the State Department for the ensuing Year or Session.

I am aware that the Executive Cannot under the law allow extra Compensation to officers of the Army & Navy and hence my desire to have my claim inserted with Your Concurrence in the Estimates If it were not for this Consideration, I should have deferred the application until my return to Washington

The State Department placed at my disposal ample funds to defray all incidental expenses growing out of my negotiations, but I deemed it most advisable and proper not to use such funds Preferring to leave to the justice of the Government the decision as to the amount of my Compensation

It is known to the State Department That I had full powers as Envoy to Japan besides five blank letters of Credence or Powers, to be filled up by me if favourable occasion for negotiation with other nations of the East should Occur

With great Respect I have The Honour To Be
Your Most Obt Sert

M, C, PERRY

The Honbl Wm L MARCY
Secy of State
Washington

On December 27, 1854, the Senate agreed to a resolution submitted by Senator Hamilton Fish, of New York, instructing the Committee on Foreign Relations "to inquire and report whether any and what compensation should be allowed to Commodore M. C. Perry for his services in negotiating a treaty with the Empire of Japan" (Congressional Globe, 33d Congress, 2d session, p. 135). A copy of this resolution was, on January 9, 1855, sent to Marcy by the Chairman of the Committee on Foreign Relations, Senator James M. Mason, of Virginia, who asked for the views of the Department of State (D.S., Miscellaneous Letters, January, 1855). Marcy's answer, of January 16, was in these terms (D.S., 7 Report Book, 169–70):

DEPARTMENT OF STATE,
Washington, Jan. 16, 1855.

To the Honorable
JAMES M. MASON,
Chairman of the Com. on Foreign Relations, Senate.

SIR: I have the honor to acknowledge the receipt of your letter of the 9th instant requesting the views of this Department in regard to the nature of the services rendered by, and the amount of compensation which should be allowed to, Commodore Perry for his diplomatic services in negotiating a Treaty with the Empire of Japan.

In reply, I have the honor to acquaint you, that as all the instructions to Commodore Perry relative to his mission to Japan have been communicated to the

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Senate, it is believed that the judgment of the Committee upon the subject, would derive no advantage from the opinion of the Secretary of State.

Extraordinary compensation has been given by Congress to persons in public employment for services in negotiating treaties, but there is no fixed rate for such allowances established by practice.

Without undertaking to say what allowance ought to be made to Com. Perry, I bear cheerful testimony to his skill and ability in bringing to a successful termination the important and difficult negotiation with the Empire of Japan.

I have the honor to be, Sir, etc.,

W. L. MARCY.

A bill for the relief of Commodore Perry was reported by Senator Mason on February 15, 1855 (Congressional Globe, 33d Congress, 2d session, p. 742). The close of the Congress then holding was approaching. The following is from the record of the proceedings on March 2, 1855 (*ibid.*, 1094):

Mr. MASON. I am also instructed by the Committee on Foreign Relations to offer the following amendment to come in at the end of the appropriations for "intercourse with foreign nations:"

> To reimburse Commodore M. C. Perry of the United States Navy, the extraordinary expenses incurred by him on his recent mission to Japan, and as a consideration for his eminent public services in effecting a treaty of amity and commerce with that Power, $20,000, to be received in full of all expenses or other charges incurred by him on that mission.

The Committee on Foreign Relations made a report accompanying the bill which was reported on this subject, the substance of which was, that an amount of $15,000 had been placed in the hands of Commodore Perry by the Department of State to defray the extraordinary expenses of his mission, but he used only $2,000, and those $2,000 he used in having presents purchased at Paris for the purposes of his mission. The residue he very properly, I think, abstained from using because it would involve the settlement of accounts here for expenditures of an extraordinary character incident to that mission. The Committee examined the subject with great care, and entertain, as I believe the country entertains, a very high sense of the eminent services which Commodore Perry rendered to the country in opening a communication with Japan.

The amendment offered by the Committee on Foreign Relations became law as part of the Civil and Diplomatic Appropriation Act of March 3, 1855 (10 Statutes at Large, 643–75, at p. 659).

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Treaty Series No. 124
10 Statutes at Large, 1089–92
18 *ibid.*, pt. 2, Public Treaties, 329–33

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GREAT BRITAIN : JUNE 5, 1854

Treaty Regarding the North Atlantic Fisheries, Commercial Reciprocity with British North American Colonies, and Navigation of the St. Lawrence River, Lake Michigan, and Other Waters, signed at Washington June 5, 1854. Original in English.
Submitted to the Senate June 21, 1854. (Message of June 20, 1854.)
Resolution of advice and consent August 2, 1854. Ratified by the United States August 9, 1854. Ratified by Great Britain August 17, 1854. Ratifications exchanged at Washington September 9, 1854. Proclaimed September 11, 1854.

The Government of the United States being equally desirous with Her Majesty the Queen of Great Britain to avoid further misunderstanding between their respective citizens and subjects, in regard to the extent of the right of fishing on the coasts of British North America, secured to each by Article I. of a convention [1] between the United States and Great Britain, signed at London on the 20th day of October, 1818; and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's Possessions in North America and the United States in such manner as to render the same reciprocally beneficial and satisfactory, have respectively named Plenipotentiaries to confer and agree thereupon—that is to say, the President of the United States of America, William L. Marcy, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, James, Earl of Elgin and Kincardine, Lord Bruce, and Elgin, a Peer of the United Kingdom, Knight of the Most Antient and Most Noble Order of the Thistle, and Governor General in and over all Her Britannic Majesty's Provinces on the Continent of North America, and in and over the Island of Prince Edward; who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

[1] Document 40.

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ART. I.

It is agreed by the High Contracting Parties, that in addition to the liberty secured to the United States fishermen by the above mentioned convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea coasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several Islands thereunto adjacent, without being restricted to any distance from the shore; with permission to land upon the coasts and shores of those Colonies and the Islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish: provided that, in so doing, they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose.

It is understood that the above mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all fisheries in rivers, and the mouths of rivers, are hereby reserved exclusively for British fishermen.

And it is further agreed that in order to prevent or settle any disputes as to the places to which the reservation of exclusive right to British fishermen contained in this Article, and that of fishermen of the United States contained in the next succeeding Article, apply, each of the High Contracting Parties, on the application of either to the other, shall, within six months thereafter, appoint a Commissioner. The said Commissioners, before proceeding to any business, shall make and subscribe a solemn declaration that they will impartially and carefully examine and decide to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such places as are intended to be reserved and excluded from the common liberty of fishing under this and the next succeeding Article; and such declaration shall be entered on the record of their proceedings. The Commissioners shall name some third person to act as an Arbitrator or Umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Arbi-

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trator or Umpire in cases of difference or disagreement between the Commissioners. The person so to be chosen to be Arbitrator or Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of either of the Commissioners or of the Arbitrator or Umpire, or of their or his omitting, declining, or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different person shall be appointed or named as aforesaid to act as such Commissioner, Arbitrator, or Umpire, in the place and stead of the person so originally appointed or named as aforesaid, and shall make and subscribe such declaration as aforesaid.

Such Commissioners shall proceed to examine the coasts of the North American Provinces and of the United States embraced within the provisions of the first and second articles of this treaty, and shall designate the places reserved by the said Articles from the common right of fishing therein.

The decision of the Commissioners and of the Arbitrator or Umpire shall be given in writing in each case, and shall be signed by them respectively.

The High Contracting Parties hereby solemnly engage to consider the decision of the Commissioners conjointly, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive in each case decided upon by them or him, respectively.

ART. II.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty to take fish of every kind, except shell-fish, on the Eastern sea coasts and shores of the United States, North of the 36th parallel of North Latitude, and on the shores of the several Islands thereunto adjacent, and in the bays, harbors, and creeks of the said sea coasts and shores of the United States and of the said Islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the Islands aforesaid, for the purpose of drying their nets and curing their fish: provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

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It is understood that the above mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ART. III.

It is agreed that the articles enumerated in the schedule hereunto annexed, being the growth and produce of the aforesaid British Colonies, or of the United States, shall be admitted into each country respectively free of duty.

Schedule.

Grain, flour, and breadstuffs of all kinds.
Animals of all kinds.
Fresh, smoked, and salted meats.
Cotton-wool, seeds, and vegetables.
Undried fruits. Dried fruits.
Fish of all kinds.
Products of fish and of all other creatures living in the water.
Poultry. Eggs.
Hides, furs, skins or tails undressed.
Stone or marble in its crude or unwrought state.
Slate.
Butter, cheese, tallow.
Lard, horns, manures.
Ores of metals of all kinds.
Coal.
Pitch, tar, turpentine, ashes.
Timber and lumber of all kinds, round, hewed and sawed, unmanufactured in whole or in part.
Firewood.
Plants, shrubs, and trees.
Pelts, wool.
Fish-Oil.
Rice, broomcorn, and bark.
Gypsum, ground, or unground.
Hewn or wrought or unwrought burr or grindstones.
Dye-stuffs.
Flax, hemp, and tow unmanufactured.
Unmanufactured tobacco.
Rags.

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ART. IV.

It is agreed that the citizens and inhabitants of the United States shall have the right to navigate the river St Lawrence and the canals in Canada used as the means of communicating between the great Lakes and the Atlantic Ocean, with their vessels, boats, and crafts, as fully and freely as the subjects of Her Britannic Majesty, subject only to the same tolls and other assessments as now are or may hereafter be exacted of Her Majesty's said subjects, it being understood, however, that the British Government retains the right of suspending this privilege on giving due notice thereof to the Government of the United States.

It is further agreed that if at any time the British Government should exercise the said reserved right, the Government of the United States shall have the right of suspending, if it think fit, the operation of Art. III. of the present treaty in so far as the Province of Canada is affected thereby, for so long as the suspension of the free navigation of the river St Lawrence or the canals may continue.

It is further agreed that British subjects shall have the right freely to navigate Lake Michigan with their vessels, boats, and crafts, so long as the privilege of navigating the river St Lawrence secured to American citizens by the above clause of the present Article shall continue, and the Government of the United States further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals on terms of equality with the inhabitants of the United States.

And it is further agreed that no export duty or other duty shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine watered by the river St John and its tributaries and floated down that river to the sea, when the same is shipped to the United States from the Province of New Brunswick.

ART. V.

The present treaty shall take effect as soon as the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain and by the Provincial Parliaments of those of the British North American Colonies which are affected by this treaty on the one hand, and by the Congress of the United States on the other. Such assent having been given, the treaty shall remain in force for ten years from the date at which it may come into operation, and further until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its

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wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of ten years, or at any time afterwards.

It is clearly understood, however, that this stipulation is not intended to affect the reservation made by Article IV. of the present treaty with regard to the right of temporarily suspending the operation of Articles III. and IV. thereof.

ART. VI.

And it is hereby further agreed that the provisions and stipulations of the foregoing Articles shall extend to the Island of Newfoundland, so far as they are applicable to that Colony. But if the Imperial Parliament, the Provincial Parliament of Newfoundland, or the Congress of the United States shall not embrace in their laws enacted for carrying this treaty into effect, the Colony of Newfoundland, then this Article shall be of no effect, but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair the remaining Articles of this treaty.

ART. VII.

The present treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in Washington, within six months from the date hereof, or earlier, if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

Done, in triplicate, at Washington, the fifth day of June, Anno Domini one thousand eight hundred and fifty-four.

W. L. MARCY. [Seal]

ELGIN & KINCARDINE [Seal]

NOTES

It is to be remembered that at the time of this treaty "Canada" was the union of the Provinces of Upper and Lower Canada (Ontario and Quebec) under the British North America Act of July 23, 1840 (3 and 4 Victoria, cap. 35; 29 British and Foreign State Papers, 1321–42); there were separate governments of the Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, as well as of Newfoundland. Confederation and the existence of the Dominion of Canada, comprising at first the four Provinces of Ontario, Quebec, New Brunswick, and Nova Scotia, date from July 1, 1867.

This treaty was thus in no way applicable to British North American territory west of Ontario. In the northwest mainland, north of the 49th parallel, the Hudson's Bay Company had exclusive rights of

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trade with the Indians by grant of 1838 from the Crown, expiring in 1859; in 1854 no organized government existed in that region; the Colony of British Columbia was not founded until 1858. The Colony of Vancouver Island had been established in 1849 and had separate existence until 1866, when it was joined with the Colony of British Columbia; but Vancouver Island in its entirety had been granted by the Crown to the Hudson's Bay Company in 1849, subject to certain conditions, among which was settlement by resident colonists (for the grant of exclusive trade dated May 30, 1838, and the grant of Vancouver Island dated January 13, 1849, see Scholefield, British Columbia, I, 672–75, 676–80); and when this treaty was made no duties were levied on imports into Vancouver Island.

The File Papers

The papers in the treaty file include the signed original of the treaty, the attested Senate resolution of August 2, the duplicate United States instrument of ratification of August 9, the British instrument of ratification of August 17, the certificate of the exchange of ratifications at Washington on September 9, and the original proclamation of September 11, 1854.

The Full Powers

The full power of Secretary of State William L. Marcy was issued on the day of the signature of the treaty in this form, adapted to the circumstances; the British Plenipotentiary is named, with a reference to his full power (D.S., 4 Credences, 50):

Franklin Pierce, President of the United States of America.

To all whom these presents shall concern, Greeting:

Know Ye, That I have given and granted, and do hereby give and grant, to William L. Marcy, Secretary of State of the United States, full power and authority, and also general and special command, to meet and confer with Her Britannic Majesty's Plenipotentiary, James, Earl of Elgin and Kincardine, Lord Bruce and Elgin, he being furnished with like full power on the part of his Government; and with him to treat of and concerning the fisheries on the coasts of Her Britannic Majesty's North American Provinces and a reciprocity of commercial intercourse between the United States and the said Provinces, and of all matters and subjects connected therewith, which may be interesting to the two Nations; and to conclude and sign a treaty or treaties, convention or conventions, touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed.

(L.S) Given under my hand, at the City of Washington, this fifth day of June, A.D. 1854, and of the Independence of the United States, the seventy-eighth.

Franklin Pierce.

By the President:
W. L. Marcy,
Secretary of State.

The full power of Lord Elgin, the British Plenipotentiary, was an enclosure with his general instructions of May 4, 1854 (printed

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below), and authorized him "to negotiate and conclude on Her Majesty's behalf any Treaty with the United States". The text of the power is not available.

Background

Commercial reciprocity between the United States and British North America began to be the subject of active discussion in 1846, the year of the repeal of the Corn Laws. During the ensuing six years, while a treaty of reciprocity was from time to time suggested, the efforts made on both sides of the boundary were for the most part legislative; conditional reciprocity acts were passed in Canada and Prince Edward Island in 1849, in New Brunswick in 1850, and in Nova Scotia in 1851 (see Masters, The Reciprocity Treaty of 1854, 3–19); but all proposals for such legislation by Congress failed (for a detailed review of these, see Tansill, "The Canadian Reciprocity Treaty of 1854", 17–39, in Johns Hopkins University Studies in Historical and Political Science, XL); other authorities for the period are Shippee, Canadian-American Relations, 1849–1874, 21–61; Morison, The Eighth Earl of Elgin, 162–68; and the publication of the United States Tariff Commission entitled Reciprocity and Commercial Treaties, 63–70; for an intensive survey of conditions in Canada prior to the treaty, see Tucker, Canadian Commercial Revolution, 1845–1851, particularly chapters 5, 6, 7, and 10; in that work at pages 246–48 is a selected bibliography of books and articles.

Conversations during the early months of the Fillmore administration between Secretary of State Clayton and the British Chargé d'Affaires, John Fiennes Twistleton Crampton, were followed by this instruction of November 1, 1849, from Lord Palmerston, Secretary of State for Foreign Affairs, to Sir Henry Bulwer, who was about to proceed to Washington as Minister of Great Britain; it will be observed that the policy expressed by Palmerston was in important respects adhered to by successive Governments at London throughout the ensuing period to 1854 (Library of Congress, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 115 : 104, No. 3; these papers are hereinafter cited "F.O."):

In my other instruction of this day's date, I have explained the nature of the Communication which Her Majesty's Government wish you to make to the Government of the United States upon the subject of the removal of the Restrictions to which British Vessels and Vessels of the United States have hitherto been reciprocally subjected in trading to the Ports of the United States on the one hand, and to those of the United Kingdom and of its Dependencies on the other. I now proceed to give you some Instructions on the subject of the Commercial Intercourse between the United States and the British Provinces in North America, a matter to which Her Majesty's Government attach great importance.

You will find by referring to the Archives of Her Majesty's Mission at Washington that Communications have already taken place with the United States' Government upon a proposal for the reciprocal free admission into the United States and into the British North American Provinces of certain Articles of the produce of each. Mr Crampton in his Despatch to me N° 63 of the 3rd of July of this year reports that, assisted by a member of the Canadian Government, he had opened a communication on this matter with the United States' Government, and that a proposition had been made on our part for a fair reciprocity of Trade in Agricultural Produce between Canada and the United States.

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To this proposal a guarded reply was made by the United States Secretary of State who intimated that the United States' Government wished, before giving any definite Answer, to wait to see the result of the proceedings then still pending in the British Parliament on the subject of the Navigation Laws. But Mr Clayton stated verbally to Mr Crampton that unless all the British North American Provinces were to be included in the arrangement to be made, and also, unless the Cod Fisheries in the Waters of the British North American Colonies were thrown open to the Fishermen of the United States, the President could not take upon himself to recommend the Congress to adopt the British Proposal.

I have now to state to you that Her Majesty's Government regard it as of the very highest importance, both commercially and politically, that free admission to the Markets of the United States should be obtained for those Articles the produce of British America which are enumerated in an Act [1] passed in the last Session of the Canadian Parliament, of which I enclose a Copy for your Information.

You will observe that the Articles to which this Act applies are exclusively either Articles of Agricultural Produce or raw Materials such as Timber and Metallic ores; it is not proposed that the arrangement should be carried further because the free admission of manufactures and of various other Articles could not be permitted either into the United States or into the British Provinces without interfering with the Revenue and Commercial policy of both States.

You will not fail to observe that, as regards the British Colonies, the main object to be gained by the proposed arrangement is the free introduction of their Agricultural Produce, and especially of their grain and flour, into the United States. Considering that these Articles being the Produce of the United States are now admitted into the United Kingdom on the payment of a merely nominal duty, Her Majesty's Government think themselves fairly entitled to expect that, in return for this great advantage enjoyed by the United States, the agricultural produce of British America should be admitted to the Markets of the Union on equally favorable terms. But however reasonably this reciprocal concession might be expected from the United States, yet as the Government of the United States seems unwilling to grant it without receiving some further Commercial advantages from Great Britain, Her Majesty's Government are not indisposed to make to the United States some further concessions which they believe might be made without injury to British Interests.

Her Majesty's Government are accordingly prepared, in the first place, to consent, with one single exception, to Mr Clayton's proposal that the arrangement to be made should extend to all the British Colonies in North America; the single exception would be Newfoundland, to which, for reasons I will hereafter state, Her Majesty's Government consider that the arrangement ought not to apply. In the next place, Her Majesty's Government are also prepared, on certain conditions and with certain reservations, to make the concession to which so much importance seems to have been attached by Mr Clayton, namely, to throw open to the Fishermen of the United States the Fisheries in the Waters of the British North American Colonies, with permission to those Fishermen to land on the Coasts of those Colonies for the purpose of drying their nets and curing their Fish provided that in so doing they do not interfere with the Owners of private Property or with the Operations of British Fishermen.

Her Majesty's Government, however, would require as an indispensable condition in return for this concession, that all Fish, either Fresh or cured, imported into the United States from the British North American Possessions in Vessels of any Nation or description, should be admitted into the the United States Duty free, and upon Terms, in all respects, of equality with Fish imported by Citizens of the United States.

Her Majesty's Government would also feel it necessary to attach to this concession the reservation that, as the concession applies solely to the sea Fishery,

[1] This act was 12 Victoria, cap. 3 (Provincial Statutes of Canada, III, 2d session, 3d Parliament, 102–3); the articles enumerated were grain and breadstuffs of all kinds, vegetables, fruits, seeds, animals, hides, wool, butter, cheese, tallow, horns, salted and fresh meats, ores of all kinds of metals, ashes, timber, staves, wood, and lumber of all kinds.

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the Fisheries in Estuaries and in the Mouths of Rivers, of which the Salmon Fishery is the most important, must be reserved exclusively for British Fishermen, such Fisheries being more or less of the nature of local or private property.

To the concessions above-mentioned, Her Majesty's Government would be prepared, if necessary, to add the admission of United States' Vessels and Citizens to a full and free participation in the Navigation of the River St. Lawrence, and of certain Canals to be specified, which are connected with that Navigation; with the reservation, however, that the British Government must retain the right of suspending this Privilege, on giving due notice thereof to the Government of the United States whenever political considerations, of which the British Government must be the sole Judge, should, in its opinion, render such a measure necessary.

Her Majesty's Government might also possibly, if it should be necessary, be willing to enter into an Agreement with the Government of the United States for giving up that Right to navigate the River Columbia which was reserved to British Subjects by the 2d Article of the Treaty[1] of June 15. 1846 about the Oregon Territory.

But as such a concession would involve considerations connected with the Interests of the Hudson's Bay Company, Her Majesty's Government could not enter into any Agreement with the United States on this matter without previous consultation with that Company; and I mention this matter now, not in order that you should make any suggestion about it to the United States' Government, but in order that, if they should make any proposal thereupon to you, you may feel yourself at liberty to refer it for the consideration of Her Majesty's Government.

Such, then, are the Commercial advantages which Her Majesty's Government are desirous of obtaining from the United States, and such are the concessions which they are willing, if necessary, to make in order to obtain those advantages.

You will of course understand that, in stating to you at once the full extent of these concessions, Her Majesty's Government do not mean that you should go further in regard to them than you may find to be necessary for the attainment of the objects in view. It is probable that, in reply to your application for the free admission of the Produce of the British Provinces into the United States, the United States' Government will ask for the admission of the United States' Fishermen to a participation in the British North American Fisheries; and it is possible that you may be able to conclude an Agreement on those Terms. This, of course, you should, in the first place, endeavour to do, but if you should find this impossible you will then proceed to add the offer of the free navigation of the St. Lawrence.

With reference to the arrangement for the free admission of the Produce of the British Provinces into the United States, I have to say that Her Majesty's Government are very desirous that Coals should be included in the List of Articles to be admitted free of duty from the United States into the British Provinces, and from the British Provinces into the United States. To the Province of Nova Scotia such an arrangement would be an object of very great importance; but as there is reason to believe that such proposal would be likely to meet with much objection on the part of the Government of the United States, as being injurious to the private Interests of influential Parties in the Union, I have to instruct you not to stand out upon this point if you should find that it would throw any insurmountable difficulty in the way of the speedy conclusion of the Negotiation.

I have stated that it does not appear to Her Majesty's Government that any part of the proposed arrangement ought to apply to Newfoundland.

The reason for this exception is that Newfoundland stands upon a footing different from that of the other British Provinces, and because Her Majesty's Government would wish for the present to exclude Newfoundland from the proposed Agreement, and to reserve the case of that Colony for separate consideration.

I have only to add that in conducting this Negotiation you will communicate freely with the Governor General of the British North American Provinces on

[1] Document 122.

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all points affecting their Interests. Lord Elgin will be instructed to afford you all the information and assistance in his power.

In a private despatch to Lord Malmesbury, Secretary of State for Foreign Affairs, Crampton, now British Minister at Washington, thus summed up what, as he saw it, took place from 1847 to 1852, when the fisheries question[1] became of major importance in Anglo-American relations (F.O. 5 : 547, September 6, 1852, excerpt):

In 1847 in consequence of a Petition to that effect to The Queen by the Canadian Parliament, Her Majesty's Legation here proposed to the United States Government to establish a reciprocal Free Trade between Canada and the United States in certain "natural productions"—wheat, timber, minerals, cattle &c being the principal Articles Mr Walker, at that time Secretary of the Treasury, was in favour of the measure, and as the best way of effecting the object in view, proposed that a Bill taking off the Duties on the articles in question imported from Canada should be submitted to Congress, it being provided that the Provisions of such Bill should come into force so soon as the Canadian Parliament had, on their side, passed a similar Bill regarding the same articles imported into Canada from the United States. The Bill was accordingly introduced into the House of Representatives and passed without debate. It went up to the Senate, but failed, not by opposition, but from delay principally caused by the illness of Mr Dix, the Senator, who had charge of the Bill, who, however, made a very able speech on the subject. In 1849 the Bill was again brought into the Senate;—but on this occasion from an opposition having been got up against it by the Protectionist Party on the one hand, and by the Southerns on the other who were then very bitter against the North on the subject of Slavery, and who opposed the Reciprocity Bill without examination, on no other ground than because it was a "Northern" measure. The Bill however was not defeated in debate, but got rid of by delay, as on the previous occasion.

Her Majesty's Legation then applied to General Taylor's Administration which had just come into power, to know whether they would settle this matter by negotiation as a Treaty, or whether they would give it their cordial support as a Bill in the next Congress. Mr Clayton, the new Secretary of State, after some delay, replied to me (then Chargé d'Affaires) that the United States Government did not think it, on Constitutional Grounds, a matter for negotiation, and also declined, upon Grounds of Commercial Policy, to support the Bill in Congress. Mr Clayton however added, in conversation with me and by private note to Mr Merritt of Canada,[2] that the United States Government would,

[1] The elaborate "Report on the Principal Fisheries of the American Seas", made by Lorenzo Sabine under date of December 6, 1852, cited hereinafter as "Sabine Report", is in House Miscellaneous Document No. 32, 42d Congress, 2d session (serial 1524), preceded by a report of Secretary of State Thomas Jefferson dated February 1, 1791; the Sabine Report accompanied the report of the Secretary of the Treasury, Thomas Corwin, for the fiscal year ending June 30, 1852, and was printed therewith in Senate Executive Document No. 22, 32d Congress, 2d session (serial 662), pp. 181–493, and also in House Executive Document No. 23, same session (serial 676), pp. 181–493.

[2] William Hamilton Merritt, then in the Government of Canada as President of the Executive Council. In a draft letter to Merritt, dated June 30, 1849, Clayton quoted this from a note of Merritt of June 29: "You appear to comprehend its magnitude [the trade with the British North American Colonies], & disposed to acknowledge the advantages you would derive, were the British Chargé d'affaires empowered to treat for its Surrender of the Fisheries. Still your Cabinet will not say that, in case G. Britain will open the interior coasting trade, the St. Lawrence Canals, & Surrender the right of the Fisheries, you will be willing to give the colonies reciprocity in their natural productions", and wrote: "No person having the semblance of authority to speak for the British Govt has made any such offer to us. If Mr Crampton, yourself, or any other person, properly authorised so to speak, shall make such a proposition, we shall be immediately prepared to reply to it, & to treat with him on just terms" (D.S., 16 Special Agents).

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nevertheless, not be indisposed to entertain the Question of a general commercial arrangement on the basis of reciprocity, in which all the British North American Colonies should be included,—with the sine quâ non, however, that the reserved right of fishing secured to the Colonies should be included in the Cessions on their side,—and Mr Clayton offered to enter into negotiations with me on this basis, if I felt myself empowered to do so. Being without any knowledge either of the determination of Her Majesty's Government, or of the wishes of the Colonies possessing the Fisheries, I could of course only refer the matter home. It was taken into consideration by Her Majesty's Government,—the Colonies interested in the Fisheries were consulted, and an Instruction drawn up and addressed to Sir Henry Bulwer, then about to proceed to his Post, dated the 1st of November 1849, (No 3.),[1] by which he was authorized to enter into a negotiation, by which the exclusive right of the Fisheries was to be ceded to the United States by the Colonies, (except Newfoundland, which objected to yield its fisheries on any terms,) with certain restrictions, in exchange for reciprocity of Trade with the United States in all natural productions, as well as fish, that is to say, wheat, timber &c. &c. It was to be intimated that in case this arrangement was made, the Navigation of the St Lawrence would be opened to the Americans, subject however to a power of withdrawal of that privilege on political grounds of which the British Government was to be the sole judge. Such is the outline of the Proposal made to the United States by Sir Henry Bulwer, and which, as it has never been withdrawn, is, I presume, still supposed to exist. The terms were favourably received by the United States Government, but some delay occurred in consequence of the death of General Taylor in July 1850 and the consequent change of Administration. When the subject was again taken into consideration, the same difficulty again presented itself to the United States Government as to whether the measure could be better carried by Legislation or by Treaty. The President doubting whether it was a proper subject for Negotiation, it was at last determined to bring a Bill on the subject into Congress. This was done in 1850, and, as Sir Henry Bulwer's despatches inform Her Majesty's Government, the Bill again failed. Sir Henry again pressed the United States Government to settle the matter: after considerable delay the President again declined negotiation, but promised to recommend the subject to the consideration of Congress at the opening of the ensuing Session. This promise he fulfilled, as will be seen by reference to his Message in December last[2] at the opening of the Session now just closed. Nothing however has been done by Congress on the subject, except the drawing up of a Report and Draft of a Bill by the Chairman of the Committee of Commerce, which Report and Bill, however, he has not thought it would be conducive to the success of the measure to present. The excitement in regard to the Fisheries came at a time which encreased our difficulties; but the Country, I think, desires the settlement of the Question, and is now alive to its importance.

As between the United States and Great Britain the diplomatic history of the North Atlantic fisheries dates from 1782 (see Moore, Digest, I, 767 *et seq.*); those fisheries had been dealt with in the Preliminary Articles of Peace of November 30, 1782, and likewise in the Definitive Treaty of Peace of September 3, 1783 (Documents 7 and 11); the fishery clauses of 1783 were replaced by Article 1 of the convention of October 20, 1818 (Document 40); during the operation of that convention down to 1852 there had been from time to time seizures of American fishing vessels;[3] but in 1852 there were only two

[1] Printed above.

[2] For the paragraph on the subject in the message of December 2, 1851, see Richardson, V, 118–19.

[3] It is said in Sabine Report, 266, that fifty-one American vessels were seized between 1818 and 1851, of which twenty-six were released without trial or by decree and twenty-five were condemned.

According to a return of the Court of Vice Admiralty at Halifax dated July 30, 1852, the number of American vessels seized for violation of the convention of

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such seizures which were known at the American Legation at London to have been the subject of diplomatic correspondence;[1] these were the *Washington* and the *Argus;*[2] and, at the most, only five "Fishery Cases" were among the claims presented to the Commission under the convention of February 8, 1853 (see, in the editorial notes to Document 157, American claims No. 16, the *Caroline Knight;* No. 18, the *Pallas;* No. 19, the *Argus;* No. 26, the *Washington;* and No. 27, the *Director;* and for Nos. 26, 18, and 19, see Moore, International Arbitrations, IV, 4342–46; Nos. 18 and 27 were dismissed; the awards in the other three cases totaled $6,887.60).

There were differing views of the legal effect of the convention of 1818, particularly in respect of "bays"; the renunciation by the United States of the liberty "to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours" was deemed by the British Government to exclude American fishing even in the Bay of Fundy; in 1843 the *Washington*, a fishing schooner, was there seized ten miles from shore and was decreed to be forfeited (see the references above to case No. 26).

Representations respecting the case of the *Washington* (and also the case of the *Argus*) were made in 1844 by Edward Everett, Minister at London, to the Earl of Aberdeen, Secretary of State for Foreign Affairs;[3] and in a note of March 10, 1845, the latter wrote that the British Government, while "still constrained to deny the right of United States' Citizens under the Treaty of 1818, to fish in that part of the Bay of Fundy, which from its geographical position may properly be considered as included within the British Possessions", and while still maintaining "that the Bay of Fundy is rightfully claimed by Great Britain as a Bay within the meaning of the Treaty of 1818", had come to the determination "to relax in favour of the United States fishermen, that right which Great Britain has hitherto exercised, of excluding those fishermen from the British portion of the Bay of Fundy; and they are prepared to direct their Colonial Authorities to allow henceforward the United States' fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the Treaty of 1818, within three miles of the *entrance* of any bay on the Coast of Nova Scotia or New Brunswick" (D.S., 54 Despatches, Great Britain, No. 278, March 25, 1845, enclosure 1).

1818 and prosecuted in that court from 1838 to 1851 was twenty-eight, of which twenty-four had been condemned and three restored (F.O. 5 : 546, No. 115, August 9, 1852, enclosure 4).

[1] See, in the editorial notes to Document 157, the memorandum with the despatch of Abbott Lawrence of February 18, 1852.

[2] In his argument as counsel in the North Atlantic Coast Fisheries Arbitration before the Hague Tribunal, Senator Root said on August 11, 1910, that these two "were the only vessels ever captured outside of the 3-mile limit" (Argument of the Honorable Elihu Root on Behalf of the United States, 263).

[3] On the cases of the *Washington* and the *Argus*, see Meyer, Extent of Jurisdiction in Coastal Waters, 287–96, 298–303; but the statement on p. 298 of the cited work regarding Cape Percy and Cape North needs qualifying; the narrow neck of land connecting the two parts of Cape Breton Island is traversed, not by a "strait", but by St. Peter Canal (Hydrographic Office Chart No. 1236).

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In May 1852 [1] the British Government decided to station a naval force [2] in the waters of New Brunswick, Nova Scotia, and Prince Edward Island, and in the Gulf of St. Lawrence, under Vice Admiral Sir George Francis Seymour (for views and reasons expressed at London by various personages at the time, see Masters, *op. cit.*, 40–46). News of this action caused much excitement in the United States; official notice thereof was not given to this Government until July 5, 1852, when this note to Secretary of State Webster was written by Crampton, the British Minister (D.S., 29 Notes from the British Legation):

> I have been directed by Her Majesty's Government to bring to the knowledge of the Government of the United States a measure which has been adopted by Her Majesty's Government to prevent a repetition of the complaints which have so frequently been made of the encroachments of vessels belonging to citizens of the United States and of France upon the fishing grounds reserved to Great Britain by the Convention of 1818.
>
> Urgent representations having been addressed to Her Majesty's Government by the Governors of the British North American Provinces in regard to these encroachments, whereby the Colonial fisheries are most seriously prejudiced, directions have been given by the Lords of Her Majesty's Admiralty for stationing off New Brunswick, Nova Scotia, Prince Edward's Island, and in the Gulf of St. Lawrence, such a force of small sailing vessels and steamers as shall be deemed sufficient to prevent the infraction of the Treaty. It is the command of the Queen that the officers employed upon this service should be specially enjoined to avoid all interference with the vessels of Friendly Powers, except when they are in the act of violating the Treaty, and on all occasions to avoid giving ground of complaint by the adoption of harsh or unnecessary proceedings when circumstances compel their arrest or seizure.

It was supposed at Washington that British policy had changed and that the concession of 1845 regarding the Bay of Fundy was to be withdrawn; Secretary of State Webster had left the capital on July 5, without knowledge of the note of Crampton of that date; [3] he was at New York on July 7 (see Writings and Speeches of Daniel Webster, national ed., XVIII, 534), whence he went to Boston and later to Franklin, New Hampshire, arriving there on July 12; while at Franklin he received word of the British action (see Curtis, Life of Daniel Webster, II, 639); from Franklin he wrote on July 17 to President Fillmore that he had prepared a statement for the press,

[1] The letter from the Secretary of State for the Colonies, Sir John Pakington, to the Admiralty, "signifying Her Majesty's Commands", is dated June 2, 1852 (F.O. 115:121, Malmesbury to Crampton, No. 59, June 15, 1852, enclosure).

[2] For the size of the naval force in this and the previous year, see Sabine Report, 232–33.

[3] In a postscript of December 23 to his instruction of December 4, 1852, to Joseph R. Ingersoll, Minister at London, Secretary of State Everett wrote "that the alarm felt by Mr. Webster and shared by the President and all the Members of the Cabinet, was deep and unaffected. It was caused by information received directly from the Provinces Although Mr. Webster's notice was published on the 20th [*19th*] of July, and for the sake of official form was dated at Washington, Mr. Crampton's note of the 5th of July had never been seen by Mr. Webster, who left Washington that day; nor if it had been seen by him was it of a nature to relieve the alarm justly caused by the information transmitted from the colonies" (D.S., 16 Instructions, Great Britain, 154–77).

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pursuant to Fillmore's suggestion; on the same day he wrote to Crampton that he wished to see him either at Boston or at Marshfield (for the two letters, see *ibid.*, 641–42); the statement,[1] dated at the Department of State July 6, 1852, was published in the Boston Daily Courier of Monday, July 19, page 2, concluding with this paragraph (for the full text, see the cited edition of Writings and Speeches, XIV, 555–60; and for the speech made at Marshfield July 24,[2] the last public address of Webster, see *ibid.*, XIII, 539–42):

> It is this construction of the intent and meaning of the Convention of 1818, for which the colonies have contended since 1841, and which they have desired should be enforced. This, the English Government has now, it would appear, consented to do, and the immediate effect will be, the loss of the valuable fall fishing to American fishermen; a complete interruption of the extensive fishing business of New England, attended by constant collisions of the most unpleasant and exciting character, which may end in the destruction of human life, and in the involvement of the Government in questions of a very serious nature, threatening the peace of the two countries. Not agreeing that the construction thus put upon the treaty is conformable to the intentions of the contracting parties, this information is, however, made public to the end that those concerned in American fisheries may perceive how the case at present stands, and be upon their guard. The whole subject will engage the immediate attention of the Government.

Fillmore requested Crampton to see him, and there was a conversation on July 20, described in Crampton's despatch of that date, in the course of which the President proposed that Webster and Crampton "should make some temporary arrangement of the matter until the true sense of the Treaty should be determined by the two Governments between themselves, or, if necessary, be referred to the decision of some Friendly Power" (F.O. 5 : 546, No. 105). Crampton left Washington on July 21, found Webster on July 23 at Nahant for a short conversation, and received from him a copy of Fillmore's letter to Webster of July 20 (*ibid.*, No. 106, from Boston, July 26, 1852, and enclosure); Crampton was at Marshfield with Webster from July 26 until August 5; this paragraph is from Crampton's despatch there written on August 2 (*ibid.*, No. 107):

> I observe with satisfaction that Mr Webster now clearly perceives and fairly admits the correctness of the construction of the Convention of 1818 maintained by Her Majesty's Government. The opinion[3] of the Queen's Advocate and of the Attorney General is, Mr Webster said, "undoubtedly right":—and he afterwards informed me that the President, from whom he had just received a letter on the subject, now concurred in that opinion.

Crampton was again at Washington on August 6 and had another conversation with Fillmore on (probably) August 7; from Crampton's

[1] For the criticism of this statement made by Senator Root before the Hague Tribunal on August 11, 1910, see Argument of the Honorable Elihu Root on Behalf of the United States, 323–26.

[2] Usually and erroneously said to have been made on July 25, which was a Sunday (see Boston Daily Evening Transcript, July 26, 1852, p. 1).

[3] For this opinion of August 30, 1841, see Sabine Report, 204–5. The opinion is notable for its blundering statement that "the term headland is used in the treaty" of October 20, 1818 (Document 40).

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report of that interview this paragraph is excerpted (*ibid.*, No. 115, August 9, 1852):

> Mr Fillmore's tone and manner in a long and confidential conversation which I had with him on the subject of the Fisheries, was frank and conciliatory. I remarked however with regret that, contrary to what I had been led to expect from my conversations with Mr Webster at Marshfield, he did not seem to concur in the construction of the Convention of 1818 as regards the definition of Bays, laid down in the opinion of the Advocate General and Attorney General of 30th of August 1841, but seemed rather disposed to adopt the view taken of that Point by General Cass and Mr Davis in the Debate to which I have alluded.[1] I say "rather disposed" because Mr Fillmore in avowing his impression of the correctness of that view, frankly admitted that he had not yet sufficiently examined all the documents relating to the subject, and more particularly the opinion of the Law Officers of the Crown referred to, of which he requested me to furnish him with a copy in extenso.

Papers were requested by both Houses of Congress and were sent by President Fillmore on August 2 and 9 respectively to the Senate and House of Representatives, with the statement that the U.S. steam frigate *Mississippi*, under command of Commodore Matthew Calbraith Perry,[2] had been dispatched to the fishing grounds for the purpose of protecting the rights of American fishermen under the convention of 1818 (Richardson, V, 158; the papers transmitted are in Senate Executive Document No. 100, 32d Congress, 1st session, serial 621, of 155 pages, and House Executive Document No. 120, same session, serial 648, of 108 pages); and there were animadversions in the Senate upon the course of the British Government.

On August 7 the American Minister at London, Abbott Lawrence, was told by the Foreign Secretary, the Earl of Malmesbury, that "the British Government did not intend to assert any new principle" in respect of the Bay of Fundy or otherwise (D.S., 63 Despatches, Great Britain, No. 197, August 10, 1852); the instructions to Vice Admiral Seymour, which were notified to Lawrence on August 13, were (*a*) not to interfere with the Magdalen Islands; (*b*) to consider the Bay of Fundy on the same footing as it was placed in 1845; (*c*) to capture American vessels only under precisely the same circumstances as those which would have been acted upon in late years and

[1] This was the debate in the Senate on August 3, 1852, for which see Congressional Globe, 32d Congress, 1st session. p. 2049, and appendix, pp. 894–902.

[2] The instructions to Commodore Perry from the Secretary of the Navy, John P. Kennedy, have not been printed (Naval Records and Library, Confidential Letters, No. 2, 351–57, July 28, 1852); they began with a close paraphrase of the British note of July 5, 1852 (printed above), referred to reports of recent seizures of American fishing vessels in the Bay of Fundy or its neighborhood, and directed Commodore Perry to proceed to obtain full information regarding those or other seizures; there followed a narrative of treaty relations and of the controversy over the three-mile limit in respect of bays, with an account of the concession of the note of Lord Aberdeen of March 10, 1845; Commodore Perry was enjoined to confine his proceedings to the operation of "the *clear* and *unquestionable* rights of American Citizens", which were, in effect, defined as those not denied by the British Government, assuming the right (or privilege) of fishing in the Bay of Fundy to continue as under the "arrangement" of 1845; conference with the officer in command of the British naval force and communication to him of the views of the President were directed; and, finally, inquiry was to be made into seizures and practices of previous years.

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when manifestly infringing the treaty; and (*d*) to exercise these instructions with the greatest forbearance and moderation (*ibid.*, unnumbered, August 13, 1852, enclosure); and a reasoned instruction to Crampton of August 10, 1852, which was written in order to "explain away certain points which have clearly been misunderstood" (D.S., 29 Notes from the British Legation), was communicated to Webster; tension was allayed; and the presence of naval forces of both countries in the fishing waters during the seasons of 1852[1] and 1853 brought no incident[2] (for the instructions of July 14, 1853, to Commodore William B. Shubrick, U.S.N., and reports of the cruise, see House Executive Document No. 21, 33d Congress, 1st session, serial 717).

That the fisheries question and commercial reciprocity were linked together as subjects to be dealt with conjointly was clearly indicated in this final passage of the cited instruction of Lord Malmesbury of August 10, 1852: "it will be to them [Her Majesty's Government] a source of sincere satisfaction if the attention which has thus been drawn to the subject of the Fisheries should lead to an adjustment, by amicable negotiations, upon a more satisfactory footing than at present, of the System of commercial intercourse between the United States and Her M's North American Colonial Possessions".

Negotiations Toward the Close of the Fillmore Administration

The archives of the Department of State contain very little relevant material for the period from September 1852 to March 1853.

On August 26, 1852, instructions were written to Crampton to propose to the Government of the United States that negotiations be

[1] Commodore Perry was back in New York on September 1, 1852, after an absence of thirty-two days. Six relevant communications from him to the Secretary of the Navy, respectively from Eastport, Maine, August 5, from St. John, New Brunswick, August 12, from Halifax August 18 (two letters and a telegram), and from New York September 1, 1852, are in Naval Records and Library (Captains' Letters, July–December 1852); copy of another letter, dated off Sandy Hook August 1852 (thus probably August 30 or 31), is in D.S., 3 Consular Despatches, St. John (some of the enclosures are with the letter and some are bound out of place at the end of the volume). Commodore Perry conferred with the authorities of New Brunswick and Nova Scotia and on August 17 with Vice Admiral Seymour at Halifax; he commented favorably on their attitude; after leaving Halifax he traversed the coast of Cape Breton, "passed round the Magdalen Islands, thence across by the Bay of Chaleur, and along the Northern Shore of Prince Edward Island", and during that part of his cruise saw "a great number of American vessels, mostly engaged in the mackerel fishery"; he reported seizures of seven American vessels, one of which was released.

[2] James Buchanan, Minister at London, wrote that on January 6, 1854, Lord Clarendon, at the Foreign Office, "took occasion to repeat to me the handsome things which Sir George Seymour has said to him concerning that gallant officer [Commodore Perry], as well as his successor Commodore Shubrick, for their conduct on the Fishing grounds during the years 1852 & 1853" (D.S., 65 Despatches, Great Britain, No. 20, January 10, 1854).

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entered into (F.O. 115 : 121, Nos. 85 and 86); pursuant thereto, Webster being absent (and destined not to return to Washington), Crampton waited upon the President; his interview is reported in this despatch of September 12 (F.O. 5 : 547, No. 147; the probable date of the interview is Saturday, September 11):

In conformity with the Instructions contained in Your Lordship's despatches Nº 85, and Nº 86 marked "Confidential", (both of the 26th Ultimo,) I waited upon the President of the United States for the purpose of informing him that Her Majesty's Government was ready to enter into negotiations with that of the United States upon the subject of the Rights of Fishery in British Waters which American Citizens desire to obtain,—to state the opinion of Her Majesty's Government that such negotiations should be extended to all subjects affecting the Commercial Relations of the two Countries,—and to say in case the United States Government was now disposed to enter seriously upon the Consideration of these important subjects, that Her Majesty's Government would much prefer that the Negotiations for arranging them by Treaty should be carried on in London.

I began by saying to Mr Fillmore that great as was my confidence in the prudence and temper of the Commander of Her Majesty's Naval Forces on the North American Station, and of the Colonial Authorities generally, the state of things at the British Fisheries was one that I could not view without some anxiety. Independently of any real or supposed difference of opinion between the two Governments as to the interpretation of certain parts of the Convention of 1818, the position of things there was, as a matter of fact, and under the construction of the Convention admitted by both Parties, unsatisfactory to both,—not exempt from danger to the good understanding between the two Governments,—and, if long continued, or frequently renewed, calculated to engender feelings of discontent and mutual hostility between large Classes of the Populations of the United States and the British North American Colonies,—feelings, the growth of which I was convinced the American Government was as anxious as Her Majesty's Government to prevent. We had the Colonists, on the one hand, naturally resenting continued encroachments which threaten to deprive them, without equivalent, of Rights which they justly consider to appertain to them from their Position and to be secured to them by Treaty, and calling loudly upon Her Majesty's Government to protect them in the undisturbed enjoyment of what they regard to be their chief commercial resource. On the other hand we have a considerable portion of the People of New England strongly interested in extending the very encroachments complained of,—encroachments which to them have become habitual, and into the Justice of which persons of their Class of Life are not apt to examine, even when they are not, as in the present instance, supplied by persons, to whom they naturally look up as better informed than themselves, with arguments sufficiently specious by which to vindicate their really illegal proceedings. Though we cannot therefore justify the discontent of these People at the prospect of being deprived of a profitable employment, we cannot be surprised that such discontent should exist, and we ought to be prepared to obviate, as much as possible, it's ill effect.

Mr Fillmore entirely concurred in the correctness of this Statement, and I then called his attention to the consideration that even the fullest admission on the part of Her Majesty's Government of the Principle supposed to be contended for by the United States Government in regard to the term "Bay" in the Convention, would in no way affect the state of things I had described. It was now admitted on all hands, that "the close in shore" fishing is what the American Fisherman requires in order to enable him to carry on his occupation with success. If therefore, I remarked, it was the object of the American Government to allay the discontent of the Fishermen of New England and to place their Interests upon a more satisfactory basis, it was evident that this could be done in no other way than by obtaining for them, by negotiation with Her Majesty's Government, the Privilege they desire. But it is equally clear that in order to induce the Colonies to admit others to participate in the use of a Right which so clearly appertains to them alone, some equivalent must be found, and that equivalent, it appeared to

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me ought to be one calculated more or less to confer a direct advantage on the Colonies chiefly interested in the Fisheries in question. It had already been stated to the United States Government (by Sir Henry Bulwer in 1850), that the advantages which would result from a general Reciprocity of Trade on certain *natural* productions between the United States and the Colonies, would be considered by the latter sufficiently great to allow of their admitting American Citizens to participate in the British Fisheries on the same terms, with certain trifling restrictions, as British Subjects; and no consideration which I had been able to give the subject, nor any information which I had received from the Colonies, had led me to suppose that any other equivalent could be found which would, in a manner at once so obvious and complete, fulfil the conditions required. It has now, I continued, been suggested by Mr Lawrence that the Negotiations for the Settlement of the Arrangement of the Fisheries should embrace not only the Question of Reciprocity of Trade with the North American Colonies, but be extended to *all subjects* affecting the Commercial Relations of the two Countries generally, and in this opinion Her Majesty's Government concur. It was my object therefore now to enquire whether the United States Government were disposed to enter into negotiations with Her Majesty's Government on this basis, and if so, to state that Her Majesty's Government were strongly of opinion that it would be preferable that the Negotiations should be carried on in England, by which means an opportunity would be afforded for Her Majesty's Secretary of State for the Colonies and the President of the Board of Trade, who were equally concerned in the matter with the Secretary of State for Foreign Affairs, to be present at the discussions.

Mr Fillmore replied that he entirely concurred in the opinion that it would be highly desirable on every account that all the Commercial Questions between the two Countries, including the Fisheries, should now be settled, and agreed with me as to the difficulty of finding an equivalent for the Cession of the Right of Fishing by the Colonies without connecting that Question with the general Question of Reciprocity of Trade

He would unhesitatingly say that he was determined to make every effort in his power to arrange all these Questions before the end of his Administration. It was not to be concealed however that great difficulties opposed themselves to the settlement of these Questions. In the first place as regarded the Settlement of them by Treaty, there were, in his opinion, insurmountable objections to that mode as regarded by far the greater part of the arrangement proposed, though he admitted that other parts which I pointed out to him were fit and proper objects of negotiation between the two Governments. The Arrangement was however inextricably bound up with alterations in the United States Tariff, to make which alterations was the undoubted province of Congress under the Constitution. Any attempt therefore by the Executive to make such alterations by Treaty would, he had reason to know, be resisted by an overwhelming majority, and the whole arrangement would be defeated, by whatever Administration the attempt should be made. He admitted the difficulty of getting a Bill originated in Congress and passed which should embrace the whole arrangement, in such a way as could be reciprocated by the British Imperial and Colonial Legislatures; and he concurred in the suggestion which was made by Mr Webster that the terms of the proposed arrangement should first be agreed upon between the two Governments, the execution of them being left contingent on the Passing by Congress of such Enactments as would be necessary to adapt the Tariff to the Provisions of the projected Treaty, which, so soon as such Enactments had been made, could be signed. This would have the effect of making it evident to Members of Congress that any essential departure on their part from the proposed alterations in the Tariff would defeat the whole Measure, and thus prevent the proposal of numerous Amendments, dictated by purely local interests, which would otherwise either impede the progress of the Bill, or render it practically inoperative, were it to pass.

With regard to the wish of Her Majesty's Government that the Negotiations should be carried on in London, Mr Fillmore remarked that he would of course be willing that the Negotiations should be carried on where they would have the best chance of success; but he seemed to be strongly impressed with an opinion that this chance would be much better at Washington than at London. This,

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he thought, was evident from the mixed nature of the Question, as it presented itself to the United States Government, requiring on their part Legislation as well as Negotiation, and the successful solution of the Question ultimately depending upon the former. In combining a Measure dependent for its success on the action of Congress, reference and consultation with the Persons charged with the various interests there represented, and the exercise of all the Influence the Government could bring to bear upon those persons, would be absolutely essential, and this could not be so readily done were the negotiations carried on in London. A Measure matured in England would, he thought, be likely to be received with some jealousy by Congress, and would in all probability be defeated. Mr Fillmore added that the Gentleman, Mr Ingersoll, who was now about to replace Mr Lawrence, was not, he believed, sufficiently acquainted with all the bearings and details of these matters now to enter upon their negotiation, and that he, Mr Fillmore, would be unable before Mr Ingersoll's departure, to furnish him with Instructions sufficiently full and detailed to enable him to do so with advantage. Mr Fillmore said he would indeed request me to draw up a Memorandum for his own use, stating what were the different Commercial Questions pending between the two Governments which it was now desired to include in the proposed Treaty, and to state, as far as I was aware of them, the terms on which Her Majesty's Government would be prepared to treat in regard to them. I said that I would apply to Her Majesty's Government for such a Statement as he desired, but would recapitulate to him in the mean time the proposals which had at different times been made by this Legation to the United States Government under Instructions from Her Majesty's Government, which Instructions I would of course consider to be still in force until I should be otherwise informed by Your Lordship. The principal Commercial Questions in regard to which Instructions had been addressed to this Mission, were, I stated, those of Reciprocity of Trade with the North American Colonies, including the Fisheries;—the Coasting Trade as regarded the Voyage from the Eastern States of the United States to California;—and the admission of British built Vessels to American Registers when built or purchased by American Citizens.

Within the next two weeks Crampton presented to Fillmore a memorandum of commercial questions between Great Britain and the United States; their interview is reported in Crampton's despatch of September 26, 1852 (F.O. 5 : 547, No. 156), wherein he wrote that the President, "after conversing very frankly upon the different subjects adverted to in the Memorandum, said that he would immediately submit these Questions to the consideration of his Cabinet; and although he avowed that some of the matters in question were not free from difficulty, nothing should be wanting on his part to effect the best arrangement of them which might be found practicable"; the memorandum was this (*ibid.*, enclosure):

Memorandum of Commercial Questions between Gt Britain & the United States.

No 1.

Reciprocal Free Trade in all natural Productions between the United States and all Her Majesty's North American Colonies, excepting Newfoundland, would be agreed to by Her M's Govt & the following concessions would be made to the United States in order to ensure the same: viz;

Throwing open to the Fishermen of the United States the Fisheries in the Waters of the Brit. N. Amn Colonies, with permission to those fishermen to land on the Coasts of those Colonies for the purpose of drying their nets, and curing their fish, provided that in so doing they do not interfere with the owners of private property or with the operations of British fishermen, but Her M's Govt would require in return for this concession that all fish either cured or fresh, imported into the United States from the British N. Amn Possessions in Vessels

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of any Nation or description, be admitted into the United States free of duty, and upon terms, in all respects, of equality with fish imported by Citizens of the United States.

The concession above-mentioned would be considered as applying solely to the *Sea Fishery;* the fisheries in Estuaries & in the mouths of Rivers, of which the Salmon fishery is the most important, must be reserved exclusively for British Fishermen, such fisheries being more or less of the nature of local or private rights.

Her M's Govt would farther grant to United States Vessels & Citizens the admission to a full and free participation in the Navigation of the River St Lawrence and of certain Canals, to be specified, which are connected with that navigation, with the reservation however that the British Govt must retain the Right of suspending this Privilege, on giving due notice thereof to the Govt of the United States, whenever political considerations, of which the British Govt must be the sole judge, should, in its opinion, render such a measure necessary.

Her M's Govt would be desirous that coals be included in the list of articles to be admitted duty free into the United States from the British Provinces and into the British Provinces from the United States.

Nº 2.

Participation by British Vessels in the Trade between the Eastern States of the United States and California on the same terms as American Vessels, claimed by the British Government on the ground that this Trade, resembles in its nature & character the Trade between Great Britain & Her Colonies, to which American Vessels are admitted on the same terms as British Vessels.

Nº 3.

Admission to the advantages of an American Register for British built Vessels when the property of American Citizens:—asked for by the British Govt on the ground of reciprocity—American built Vessels having that privilege in Gt Britain.

The above two advantages are accorded by the British Govt to American Commerce in virtue of Acts of Parliament, by which, however, the power of withdrawing them by Order in Council is reserved to the British Govt in the cases where they shall not have been met by reciprocity. Their withdrawal is now pressed upon Her Majesty's Govt by the Shipping Interests in England.

To Crampton was then sent this instruction by Malmesbury under date of October 15, 1852 (F.O. 115 : 121, No. 97):

I have received your Despatch Nº 147 [1] reporting your Conversation with the President of the United States upon the Fishery Question and the proposal for entering into Negotiations for regulating the future commercial intercourse between the two Countries; and I have to state to you that, if you should find that the President continues strongly to object to the Negotiation being carried on in London, you are authorized, in conformity with President Filmore's suggestion, to agree that the matter shall be discussed at Washington; and that, whenever a Project of Arrangement shall have been generally agreed upon between the two Governments, the question of the alteration of the United States' Tarifs, conformably to the sense of that arrangement, shall be brought forward in Congress.

It will of course be fully understood that, in case the House of Representatives should refuse to alter the American Tarif so as to meet the views of Her Majesty's Government, the whole Project of Treaty falls to the ground, and that the British Government will consider itself in no way bound by any proposition or suggestion therein contained.

Daniel Webster died on October 24, 1852; Edward Everett took office as Secretary of State on November 6; the elections of Novem-

[1] Of September 12, 1852, printed above.

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ber 2 had gone in favor of the Democratic Party, and the administration of General Franklin Pierce was to begin on March 4, 1853. In Great Britain the Government of the Earl of Derby was succeeded on December 28, 1852, by that of the Earl of Aberdeen, with Lord John Russell as Foreign Secretary; the seals of the Foreign Office passed to the Earl of Clarendon on February 21, 1853.

In his annual message to Congress of December 6, 1852, Fillmore referred to the contemplated negotiations and said: "I have thought that, whatever arrangements may be made on these two subjects [fisheries and commercial intercourse], it is expedient that they should be embraced in separate conventions" (Richardson, V, 164).

On December 16 Everett wrote to Crampton that the "Cabinet yesterday unanimously consented that I should treat with you on a basis upon which I have no doubt we can agree" (F.O. 5 : 548, No. 212, December 19, 1852, enclosure 1). At an interview the next day Everett foresaw no difficulty in agreement upon the subjects of Crampton's memorandum of September, with one exception; this was clause 2 thereof, for participation by British with American vessels in the trade between the Eastern States and California; Everett considered that paragraph 6 of section 9 of Article 1 of the Constitution was an "insuperable barrier" to such a concession; he inquired whether Crampton felt authorized to go forward with negotiation of the other questions; Crampton's answer was this (excerpt from the cited despatch of December 19, 1852):

> I replied that although by the Instructions of Her Majesty's Government I was directed to endeavour to effect an arrangement on the broadest possible basis and one which should comprehend all the commercial questions between the two Countries in regard to which a settlement was desired, I should nevertheless consider myself justified in proceeding to consider those to which I had called the President's attention without pressing that of the California Trade, in case Mr Everett and myself could agree upon the terms of a Project of Convention upon these matters at a sufficiently early period to enable me to refer it to Her Majesty's Government and receive Your Lordship's Instructions as to concluding such a Convention or not, before the expiration of the present Session of Congress to whose ultimate decision it had been agreed that the arrangement should be deferred. I reminded Mr Everett that as I could not reasonably expect to receive such Instructions in less than a period of five weeks, and that as the present Session of Congress must necessarily terminate on the 4th day of March next, no time was now to be lost in putting me in possession of the views of the Government of the United States.

A project of convention in a preamble and five articles was at once drawn up by Crampton; Everett added a sixth article, to which Crampton saw no reason to object; Everett thought that except for a few commodities in the schedule of Article 3 of the draft, especially coal, they would "have little difficulty in concluding a Convention which would be concurred in by Congress upon the terms sketched out by this Project" (*ibid.*); Crampton's suggestion of stipulations for the use by Canada of the canals of the United States and for reciprocal coasting trade on inland waters was declined by Everett on the ground that necessary inquiry regarding those matters would involve delay and render submission of the convention to Congress

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at the then pending session impracticable (F.O. 5 : 548, No. 213, December 27, 1852). The draft of six articles "provisionally agreed upon between" Everett and Crampton (on December 17 or 18) is this (enclosure 2 to the cited despatch of December 19, 1852; the preamble is here omitted; another example of the draft is in D.S., Reciprocity Negotiations, 1848–1854):

ART I.

It is agreed by the High Contracting Parties that in addition to the liberty secured to American fishermen by the above named Convention of 28th [*20th*] Oct: 1818 of taking curing & drying fish on certain Coasts of the British North American Colonies, therein defined, the Inhabitants of the U:S: shall have in Common with the Subjects of H.B.M. the liberty to take fish of every kind on the Sea Coasts & in the Bays, Harbours & Creeks of Canada, New Brunswick, Nova Scotia, & P. Edward's Island with permission to land upon the Coasts of those Colonies for the purpose of drying their nets & curing their fish, provided that in so doing they do not interfere with the owners of Private Property or with the operations of British Fishermen. It is understood that the above mentioned liberty applies solely to the Sea Fishery, & that the Fisheries in Estuaries & in the mouths of Rivers are hereby reserved exclusively for British Fishermen.

ART: II.

It is agreed that all fish, either cured or fresh, imported into the United States from the British North American Colonies in vessels of any Nation or description shall be admitted free of duty & upon terms, in all respects, of equality with fish imported by Citizens of the United States.

(This Provision to be reciprocal)

ART: III.

It is agreed that the Articles enumerated in the Schedule hereunto annexed, being the growth & produce of the aforesaid British Colonies and the United States respectively shall be admitted into each Country respectively free of duty.

Schedule:

Grain, flour & bread stuffs—of all kinds,
Salted & fresh Meats,
Animals of all kinds,
Cotton Wool,
Seeds,
Vegetables,
Undried fruits,
Fish of all kinds,
Poultry,
Hides,
Wool,
Butter,
Cheese,
Tallow,
Horns,
Manures,
Ores of all kinds of metals,
Ashes,
Wood & Lumber of all kinds,
Plants, Shrubs & Trees;
Skins, Pelts, furs or tails undressed;
Coal,

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Fish oil,
Broom Corn,
Bark,
Unwrought Burr Stones,
Dye Stuffs,
Flax;
Hemp & Tow,
Printed Books not the Copyright of British Authors when imported from the United States into the British Possessions or the Copyright of American Authors when imported from the British Possessions into the United States.

ART. IV

It is agreed that the Citizens & Vessels of the United States shall be admitted to the full & free navigation of the river St Lawrence & of the Canals (herein specified), it being understood however that the British Government retains the Right of suspending this Privilege on giving due notice thereof to the Govt of the U.S.

ART V.

It is agreed that Vessels built in Gt Britain or in British Colonies, when they are the property of American Citizens shall be entitled to Registration in the United States upon the same conditions & in the same manner as American built Vessels.

ART. VI.

(as suggested by Mr Everett)

The foregoing agreement shall take effect whenever the Laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain & the British Provincial Assemblies, on the one hand,—and by the Congress of the United States, on the other; & shall be binding only so long as said Laws, whether now existing, or hereafter to be enacted, shall remain in force; and whenever the Imperial Parliament or the Provincial Assemblies, on the one hand,—& the Congress of the United States, on the other, shall repeal said laws or either of them, the aforesaid agreement shall cease to be binding on the other Party.

The draft was then submitted to Fillmore, who by Sunday, December 19, suggested various alterations (which appear on the text sent to London), including this redraft of Article 6:

ART. VI.

(as suggested by the President)

The first & second articles of this Treaty shall not take effect until the United States shall, by a Law of Congress, give its assent to the same; but, such assent being given, those Articles shall be binding for ten years and until one year after the same Authority shall withdraw such assent, when those Articles shall cease to have any binding force, and the rights of the respective Parties, modified by said articles, shall be restored to what they were prior to the adoption of this Treaty.

The third & fourth Articles of this Treaty shall not take effect until the Legislative Authority in both Countries (including the Colonies affected thereby) shall, by legal enactments, have assented to the same; but, such assent being given, shall be binding for ten years, and until one year after such assent shall be withdrawn by one of the Parties to this Treaty, when said articles shall cease to have any binding force; but if prior to that term the right of navigation secured to the United States by the 4th Article of this Treaty shall be suspended, then the United States may elect to consider all the provisions of the third and fourth Articles as suspended during the time that such right of Navigation may be

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suspended—or to consider the remaining portion of said Articles as still binding; and the fifth article of this Treaty shall not take effect until the Legislative Authority in both Countries (including the Colonies affected thereby) shall by legal enactments, have assented to the same; but, such assent being given, shall be binding for ten years, and until one year after such assent shall be withdrawn; but the failure to give the Legislative assent herein-before required either to the first and second articles or to the 3rd and 4th, or to the 5th, or the withdrawal of such assent, shall not affect the validity of those Articles to which Such assent may be given, and not withdrawn.

As explained to Crampton by Everett, the changes made by Fillmore in the draft (not here textually set forth, except for Article 6) were discussed in the following paragraphs of Crampton's covering despatch:

The alterations suggested in regard to the 1st Article are chiefly designed, 1st to extend the privilege of fishing thereby granted to any Islands which may appertain to the Colonies in question.

2ndly to extend the right of drying and curing fish to that part of the North Eastern [1] Shore of Newfoundland on which American Citizens have already, under the Convention of 1818 a right to fish, while their right of drying and curing extends only to the Southern Shore. With regard to this Right being confined to the Southern Shore of Newfoundland by the Convention of 1818, I stated to Mr Everett that it appeared to me to be probable that it was so restricted from the fact of the French having a concurrent right with the Americans to fish on the North Western Shores of the Island and the consideration of the inconvenience which would result from the fishermen of two foreign Nations carrying on the operation of drying and curing on the Shores of an Island belonging to a third Country, as it would have been impossible to grant this privilege to the Americans and to withhold it from the French.

3rdly By omitting the words "or with the operations of British Fishermen" to avoid the occurrence of disputes between British and American Fishermen, which Mr Fillmore thinks might arise from a misunderstanding of this Phrase, which he considers to be unnecessary, as it would, as a matter of course, be understood that no Right could exist on the part of the fishermen of either Nation to interfere with the operations of the other if legally and properly conducted.

5thly To prevent the occurrence of disputes in consequence of a misunderstanding of the Phrases "Estuaries and mouths of rivers" by an enumeration, by name, of the particular Salmon Fisheries reserved to British Fishermen. Mr Fillmore also suggests that the exact limits of such Fisheries ought to be defined by a Joint Commission, and a particular description of them attached to the Treaty.

No alteration of importance is proposed by Mr Fillmore in the wording of the 2nd and 3rd Articles: but in the Schedule annexed to the 3rd Article, is suggested 1st a more specific definition of the word "Lumber" for the purpose, Mr Everett stated, of avoiding fraud by the introduction of manufactured articles of Wood under cover of the vague denomination of "Lumber of all sorts".

2ndly The Articles "Skins, Pelts and furs" are proposed to be struck out as being a class of Articles of Luxury more than of necessity and therefore properly liable to Duty for the sake of Revenue.

3rdly The important Article "Coal" is struck out by Mr Fillmore—not, as Mr Everett stated, from an unwillingness on the part of the US Government to allow its admission, but from Mr Fillmore's opinion that it would be certain to be rejected by Congress. Neither Mr Everett nor myself, however, share in this impression to the same extent as Mr Fillmore, and if, upon consultation with the Interests concerned, it should appear that the objection is not as strong as Mr Fillmore supposes, it is proposed to allow this Article to remain upon the Schedule. The President has thought it right nevertheless that I should state to Her Majesty's Government that the consent of Congress to the admission of Nova Scotia Coal would be very uncertain.

[1] "North Eastern" should be "Western & Northern", as written in the margin of the copy of the draft sent to London.

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Your Lordship will observe that the Schedule attached to the 3rd Article contains several items which were not before inserted in the Drafts of the Bills which have been brought forward on previous occasions for establishing a reciprocal free trade in natural productions between the United States and British North America: and I would here state that the additions were made at the suggestion of the Canadian Government, and with the concurrence of Mr Everett, who thought that the insertion of the additional articles proposed by Mr Hincks [1] in a Memorandum of which I have the honour to inclose a copy herewith, would conduce to the success of the measure in Congress. The Article "printed books &c." is certainly not one of "Natural Production"; but it appears from Mr Hinck's Memorandum to be one of considerable importance in the Exports of the United States into Canada, and its introduction would probably serve to gain for the proposed measure considerable support in the United States' Congress. It is of course to be stipulated that such books shall not be the copyright of British Authors when imported into Canada. The class of books exported from the United States to Canada generally, it appears, consist of School books which are produced in great quantities and at a very cheap rate in the New England States.

With regard to the IV Article by which the free navigation of the River St Lawrence is to be conceded to the United States, the President proposes that this Right should be extended to the Great Lakes. But I confess I am at a loss to understand the meaning of the Marginal Note of the President by which he remarks that the Right reserved by the British Government of suspending the privilege of navigating the St Lawrence "ought to be reciprocal".

Mr Fillmore makes the same remark in regard to Article V which confers on British Vessels, when owned by American Citizens, the advantage of an American Register. As American Vessels, owned by British Subjects, already enjoy the Privilege of British Registry, there could of course be no difficulty on this head.

The most important of the modifications proposed by Mr Fillmore, and that which appears to me to be more liable to objection on the part of Her Majesty's Government, regards the 6th Article by which it is proposed to reserve the power of Congress in regard to those parts of the Convention which are to be carried into effect by Legislative enactment. Your Lordship will have observed that Mr Fillmore, in his last annual Message,[2] expressed an opinion that it would be more expedient to make the proposed arrangements regarding the Fisheries and the Reciprocity of Trade with British North America the subject of *two separate Conventions*. I represented so strongly to Mr Everett the inexpediency of dividing the two subjects from the difficulty of finding any equivalent other than Reciprocity of Trade for the Cession by the Colonies principally interested in the Fisheries of their exclusive Right of fishing, that he consented to include them in the same Convention. The President however seems to have considered himself committed to the opinion expressed in his Message, and altho' he has conceded the point I contended for by comprizing both arrangements in one Convention, he appears to have sought, to a certain extent, to divide them again as regards the Legislative Enactments required for carrying them into effect. The Provisions of this article seem to me to be unnecessarily complicated, and their practical effect difficult to be calculated. I stated to Mr Everett frankly that if it was to appear to Her Majesty's Government that they would enable the United States' Government to suspend one part of the arrangement at pleasure while the other might be left in force, this could scarcely be expected to prove satisfactory to the Colonies concerned, or to the Imperial Government. Mr Everett denied that this was the intention of the President, or that such could ever be the effect of the Provisions of the Article. I confess that his reasoning did not appear to me to be quite satisfactory on this point. At the same time it is right to state that the late hour at which the document was communicated to me has precluded me from giving it that attentive examination which the somewhat complex provisions of the Article in question would properly require in order to form a correct estimate of all their possible bearings.

[1] Francis (later Sir Francis) Hincks, then Inspector General of Canada, a post equivalent to that of Finance Minister.

[2] Of December 6, 1852 (see Richardson, V, 163–64).

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The views of the British Government were expressed in an instruction from Lord John Russell to Crampton of January 15, 1853; the draft of Crampton was approved and was to "be adhered to as nearly as possible"; a reciprocal right of fishing in American waters was proposed; the more important of the additions suggested by President Fillmore were rejected; in particular, Newfoundland was to be expressly excluded from the stipulations, and the retention in the schedule of coal and also of skins, pelts, etc., was deemed necessary; the inclusion of metals was thought desirable; and, referring to the revised draft which was enclosed (and the text of which follows), Russell wrote: "You will understand that, subject to my previous remarks [which gave very little discretion] this draft must not be altered without reference to Her Majesty's Government; and that we should prefer some longer delay to any greater sacrifices than those which are contained in this draft" (F.O. 115 : 128, No. 5 and enclosure):

Draft of Treaty. *Preamble.*

Her Majesty The Queen of the United Kingdom of Great Britain and Ireland, and The United States of America, being equally desirous to avoid further misunderstandings between their respective Subjects and Citizens, in regard to the extent of the right of fishing on the Coasts of British North America, secured to each by Article I of the Convention between Great Britain and the United States, signed at London on the 20th of October 1818; and being also desirous to regulate by a Treaty the Commerce and Navigation between their respective territories and people, and more especially between Her Majesty's Possessions in North America and the United States, in such a manner as to render the same reciprocally beneficial and satisfactory, have named as their respective Plenipotentiaries, that is to say:—

Her Majesty The Queen of the United Kingdom of Great Britain and Ireland, John Fiennes Crampton Esqre &c. &c.

And The President of the United States of America, Edward Everett, Esquire, &c. &c.

Who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

It is agreed by the High Contracting Parties, that in addition to the liberty secured to United States' fishermen by the abovementioned Convention of the 20th of October 1818, of taking, curing, and drying fish on certain Coasts of the British North American Colonies, therein defined, the inhabitants of the United States shall have, in common with the Subjects of Her Britannic Majesty, the liberty to take fish of every kind on the Sea Coasts and Shores of the several Islands, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, and Prince Edward's Island, without being restricted to any distance from the shore; with permission to land upon the Coasts of those Colonies and the Islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish, provided that in so doing they do not interfere with the Owners of private property, or with the operations of British fishermen.

It is understood that the abovementioned liberty shall not extend to the right of fishing in the Estuaries and Rivers hereinafter designated, that is to say;

which right is reserved exclusively to British fishermen.

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ARTICLE II.

It is agreed by The High Contracting Parties that British Subjects shall have, in common with the Citizens of the United States, the liberty to take fish of every kind on the Sea Coasts of the United States, and on the Shores of the several Islands belonging thereto, and in the bays, harbours, and creeks of the United States and of the said Islands, without being restricted to any distance from the shore; with permission to land upon the Coasts of the United States and of the Islands aforesaid, for the purpose of drying their nets and curing their fish, provided that in so doing they do not interfere with the Owners of private property, or with the operations of United States' fishermen.

It is understood that the abovementioned liberty shall not extend to the right of fishing in the estuaries and rivers hereinafter designated, that is to say;

which right is reserved exclusively to United States' fishermen.

ARTICLE III.

It is agreed that all fish, either cured or fresh, being the produce of the fisheries of the British Colonies, imported into the United States from the British North American Colonies in Vessels of any Nation or description, shall be admitted free of duty, and upon terms, in all respects, whether in regard to bounties or otherwise, of equality with fish imported by Citizens of the United States from those fisheries.

It is also agreed that all fish, either cured or fresh, being the produce of United States fisheries imported into the British North American Colonies from the United States in Vessels of any Nation or description, shall be admitted free of duty, and upon terms in all respects, whether in regard to bounties or otherwise, of equality with fish imported by British Subjects from those fisheries.[1]

ARTICLE IV.

It is agreed that the articles enumerated in the Schedule hereunto annexed, being the growth and produce of the aforesaid British Colonies or of the United States, shall be admitted into each Country respectively free of duty.

Schedule.

Grain, Flour, and Breadstuffs of all kinds
Salted and fresh Meats
Animals of all kinds
Cotton wool
Seeds
Vegetables
Undried fruits
Fish of all kinds
Poultry
Hides
Wool
Butter
Cheese
Tallow
Horns
Manures
Metals, and ores of Metals of all kinds.
Ashes
Wood and Lumber, round, hewn, and sawed, unmanufactured in whole or part.
Plants, Shrubs, and Trees.

[1] At the end of this article is written in pencil this suggestion taken from the Board of Trade report of April 20, 1853 (cited below): "To omit this article as being embraced in Art. IV and to insert in article IV a provision in regard to Bounties".

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Skins, Pelts, Furs, or Tails undressed.
Coal
Fish Oil
Broom-corn
Bark
Unwrought burr-stones
Dye Stuffs
Flax
Hemp and Tow:—Also
Printed Books, not the Copyright of British Authors, when imported from the United States into the British Possessions, or the Copyright of American Authors, when imported from the British Possessions into the United States.[1]

ARTICLE V.

It is agreed that the Citizens and Vessels of the United States shall be admitted to the full and free Navigation of the River St Lawrence and of the Welland and Rideau Canals, in the same manner and on the same terms and subject to the like tolls, as British Subjects; it being understood, however, that the British Government retains the right of suspending this privilege, on giving due notice thereof to the Government of the United States.

It is further agreed that if at any time the British Government should exercise the said reserved right, the Government of the United States shall have the right of suspending, if it think fit, the operation of Article IV of the present Treaty, for so long as the suspension of the free navigation of the River St Lawrence may be continued.[2]

ARTICLE VI.

It is agreed that Vessels built in Great Britain or in any British Colony shall, when they are the property of American Citizens, be entitled to registration in the United States upon the same conditions and in the same manner as United States built Vessels.

It is in like manner agreed that Vessels built in the United States shall, when they are the property of British Subjects, be entitled to registration in the British Dominions, upon the same conditions and in the same manner as British built Vessels.

ARTICLE VII.

The stipulations of the present Treaty shall not in any way apply to the Island of Newfoundland, or the Coasts thereof.

ARTICLE VIII.

The present Treaty shall take effect as soon as the Laws required to carry it into operation shall have been passed by the Imperial Parliament of Great

[1] In the margin of the schedule, in pencil, are written: "Sheep pelts"; "lard"; "Stone & marble in its Crude or worked State"; "Gypsum ground or unground"; "firewood"; "Aggricultural implements including axes"; "rice"; "Unmanufactured tobacco & unrefined sugars". These eight classes of articles are those which were proposed by the United States to be added to the schedule when the Russell draft was presented to Everett by Crampton early in February 1853 (see the excerpt quoted below from the Board of Trade report of April 20, 1853). Excepting "worked" stone and marble, agricultural implements, and sugar, they are in the treaty schedule.

[2] In the margin of this article is written in pencil this suggestion taken from the Board of Trade report of April 20, 1853 (cited below): "This article to be accompanied by a corresponding provision admitting Canadian vessels to US Canals,—and the right of suspending such free navigation to be made reciprocal instead of the suspension of the free navigation of the St. Lawrence being met by a suspension of the operation of the Article 4 relating to free admission of raw produce".

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Britain and by the Provincial Parliaments of those of the British North American Colonies which are affected by this Treaty, on the one hand, and by the Congress of the United States, on the other. Such assent having been given, the Treaty shall remain in force for ten years from the date at which it may come into operation, and further until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of it's Wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of ten Years, or at any time afterwards.

It is clearly understood however, that this stipulation is not intended to affect the reservation made by the 5th Article of the present Treaty with regard to the right of temporarily suspending the operation of the 4th and 5th Articles thereof.

ARTICLE IX.

The present Treaty shall be ratified by Her Britannick Majesty, and by The President of the United States, by and with the Advice and Consent of the Senate thereof; and the Ratifications shall be exchanged at as soon as may be within Months from the date hereof.

In Witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the Seals of their Arms.

Done at Washington the day of in the Year of Our Lord One Thousand Eight Hundred and Fifty Three.

The instruction covering the revised draft of Russell was received by Crampton on January 31, and he communicated to Everett the attitude of the British Government and the text of the London draft. Sweeping changes proposed in the draft by the Fillmore administration are thus described in the Board of Trade report of April 20, 1853 (cited below):

It remains to consider the position in which the negotiations now stand, consequent upon the views expressed by the United States Government respecting the draft as proposed by Lord John Russell. The purport of those views may be stated as follows:

1. It is proposed by that Government to omit the clause providing for the admission to American registry of British and Colonial-built vessels when owned by American citizens.
2. To omit the important article of lumber from the Schedule to Clause 3 of the proposed Treaty, replacing it by a clause making its admission dependent upon the admission of United States lumber into this country on the same terms as Colonial lumber.
3. To exclude from the same Schedule the important articles of coal, metals, vegetables, poultry, felts [*pelts*], furs, and sails [*tails*], plants, shrubs, and trees, and printed books, all of the above being articles which the colonies consider it essential to have included in the Schedule.
4. To add to the Schedule the no less important articles of tobacco (unmanufactured), sugar (unrefined), agricultural implements, axes, gypsum, stone, and marble, rice, sheep-felts, and lard.
5. To include Newfoundland in the operation of the Treaty notwithstanding the expressed unwillingness of that colony to be so included.
6. To omit the provision for the suspension under certain circumstances of the free navigation by United States vessels of the St. Lawrence, &c.
7. To omit the reservations proposed in relation to the fishing in the estuaries, as mentioned in Articles I and II of the Draft.
8. A similar omission of the reservations of the rights of fishermen in respect of non-interference with their operations, mentioned in the same Articles,— the three last provisoes having been insisted on by Her Majesty's Government.

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Five days after receiving the Russell draft, Crampton wrote that "the present Administration of the United States have relinquished all intention of settling, by a comprehensive Arrangement, the various Commercial Questions existing between the two Countries, and, under all the circumstances of the case, have made up their minds to leave this Arrangement to their Successors in Office. With regard to the Fishery Question however they feel the responsibility which they incur by not at least endeavouring to effect some independent or even temporary arrangement in regard to it before another fishing Season is allowed to elapse" (F.O. 5:563, No. 35, February 5, 1853).

The administration proposal to which Crampton referred was made by a report from Everett to Fillmore "relative to the negotiation . . . on the subject of the fisheries, of reciprocal intercourse with the British North American provinces, and the navigation of the St. Lawrence and the canals connected with it"; this was communicated to Congress with the presidential message of February 7, 1853 (Richardson, V, 188), and thus less than a month before the close of the session; in his report the Secretary of State, after some review of subjects of the negotiation and its progress, wrote (House Executive Document No. 40, 32d Congress, 2d session, serial 677, pp. 2–3):

> The number and variety of the details which have presented themselves in the progress of the negotiation, and the important interests in different parts both of the United States and the British provinces requiring to be carefully considered, taken in connexion with the necessity of a reference to London for instructions as to all questions of moment that arise unexpectedly, have thus far prevented, and will probably render impossible, the conclusion of a comprehensive arrangement of the kind contemplated in season to be submitted to the Senate, and to become the subject of legislative action during the present short session. It is believed, however, from the progress made, and the present state of the negotiations, that time only is wanted for a satisfactory agreement between the two governments on all the subjects above alluded to.
>
> The only part of the proposed arrangement which may be considered as of an urgent nature, is such an adjustment of the fisheries question as would remove all danger of trouble on the fishing grounds during the approaching season. This is an object of great importance, and worthy the immediate attention of Congress. As belonging to a general settlement, the British government is not willing to dispose of it separately; but the Secretary of State is of opinion that, under the circumstances of the case, if Congress should pass an act admitting provincial fish free of duty into the United States, on condition that the fishermen of the United States are admitted to a full participation in the provincial fisheries, the government of Great Britain would give effect to the measure by the requisite legislation on her part; in the expectation on both sides that the question of reciprocity and of the use of the St. Lawrence, and the canals connected with it, will be taken up hereafter, with a favorable disposition to come to a mutually advantageous agreement on that part of the subject also.
>
> Even if such an act should fail to produce the desired result, which is not apprehended, it would relieve the United States of the responsibility of the consequences.

Contrary to the opinion expressed by Everett, it is clear that the attitude at the time of the British and Colonial Governments was such that the suggested statute would not have brought about "the desired result" (see the comments of Crampton in F.O. 5:563, No. 38, February 13, 1853).

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A bill along the lines of Everett's proposal failed in the Senate; in the House two proposals, one of which was similar to the Senate bill and another which dealt both with fisheries and with commercial reciprocity (though in a manner that would not have been acceptable to the British Government or to the Colonies), likewise failed (see Masters, *op. cit.*, 65–68; Tansill, *op. cit.*, 48–51; and for Crampton's unfavorable comments on the bill last mentioned, see F.O. 5:563, No. 43, February 13, 1853). The Congress ended with no action had; and the questions pending were left to the Pierce administration, in which William L. Marcy was Secretary of State.

Negotiations During the Pierce Administration

James Buchanan was appointed Minister at London on April 11, 1853; Buchanan desired to be charged with the conduct of a global negotiation embracing all subjects of controversy between Great Britain and the United States; but President Pierce was unwilling to have questions which had arisen under the Clayton-Bulwer Treaty connected with the negotiation on the fisheries and commercial reciprocity; he directed that the latter be carried on at Washington and so informed Buchanan on June 26 (see Moore, Works of James Buchanan, IX, 1–12).

With an instruction of May 20, 1853, Lord Clarendon sent to Crampton a communication of seventeen printed pages from the Board of Trade (Sir J. Emerson Tennent to Lord Wodehouse, April 20, 1853) and a letter of May 12, 1853, to the effect that the Secretary of State for the Colonies (the Duke of Newcastle) concurred in the views of the Board of Trade "on the subject of the Fisheries and Commercial Convention". Clarendon wrote (F.O. 115 : 129, No. 30 and enclosures):

> I have to desire that in any communications which may take place between yourself and the Government of the United States on the subjects to which these letters relate, you will shape your language strictly in conformity with the views therein set forth.

In respect of the draft proposed by Lord John Russell (January 15, 1853, printed above) the Board of Trade suggested alterations in this sense: (1) cessation of bounties to American fishing vessels; (2) admission of British colonial vessels to free navigation of American canals; and with those modifications it was thought that "the balance of concession by the draft Treaty would . . . be considerably more on the side of this country than on that of the United States". Beyond this the Board of Trade suggested extension of the negotiation to include "entire reconstruction" of the convention of July 3, 1815 (Document 35); and it was deemed desirable that three other matters be brought forward, perhaps in connection with the present negotiation, perhaps subsequently; these were: (1) differential duties on tea and coffee imported into the United States; (2) the relative valuations of the pound sterling and the French franc for assessment of duties; (3) further reductions in the American tariff.

Based on the communication from the Board of Trade (received at Washington on June 1) a memorandum (not available) was given by

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Crampton to Marcy, who, however, declined to extend the scope of the negotiation, writing to Crampton as follows (D.S., 7 Notes to the British Legation, 376–77, June 16, 1853):

I have received the memorandum with which you favored me, indicating the additional subjects which Her B— Majesty's Government desires to have brought into the pending negotiation relative to the Fisheries and the reciprocity trade between the United States and the British North American Provinces. After receiving the views of the President I am directed to state that it is deemed preferable to go on with the negotiation, confined to the objects which have already been brought under consideration, though I am not unwilling to include other matters obviously connected with these objects.

I desire to ascertain (presuming you will have no objection to communicate the information,) whether you are authorised by your government to proceed with the negotiation here without embracing in it the new subjects presented in your memorandum;

In case you are prepared to go on with it, I shall now be able to give it proper attention and hope it may be speedily brought to a successful close.

Marcy had been warned by Special Agent Israel De Wolf Andrews of possibilities of incident at the fishing grounds (Library of Congress, 39 Marcy Papers, 41295, Andrews to Marcy, June 17, 1853); there were rumors that American fishing vessels would proceed armed, with intent to resist interference or seizure (see F.O. 115 : 129, Nos. 45 and 61, June 20 and July 22, 1853, and enclosures); these and the American naval force to be sent to the fishing grounds were the subjects of friendly conversation between Marcy and Crampton (see *ibid.*, No. 64, July 22, 1853); during July Crampton conferred at Halifax with Vice Admiral Sir George Seymour (*ibid.*, Nos. 71 and 73, August 12 and 16, 1853).

Marcy wrote (July 6, 1853) to Richard Rush, one of the signers of the convention of October 20, 1818 (Document 40), asking his views on the construction of Article 1 thereof (D.S., 41 Domestic Letters, 444); Rush answered at length in support of the American contention (D.S., Miscellaneous Letters, July–August 1853, July 18, 1853).

After the return of Crampton from Halifax, he met with Marcy at Berkeley Springs, Virginia (now West Virginia), during the first days of August; there is this record of their conferences (Marcy Papers, Diary, 1853, 1857, 1–12):

BERKELY SPRINGS VA. *August 1st '53,*

This day I resumed negotiations with Mr. Crampton the British Minister of a Treaty concerning the Fisheries on the Coasts of the British NA provinces and a reciprocal free Trade between the U.S. and her BM's N.A. Provinces. We had before us Sketches of a convention embracing these subjects. The conference was opened by reading over & comparing the two sketches (one prepared by Mr Everett & Mr Filmore [1] and the other by the B. Govt.[2] In the British *projet.* there was this clause in the first article *provided that in occupying* & using the shore &c Am. Fishermen should not interfere "with the *operations* of Brit. Fishermen" which was objected to as too indifinite and difficulties might arise in the construction of it. I proposed to substitute the following "*Or with British Fishermen in the free and peaceible use of any part of said coasts in their occupancy for the same purpose*"

[1] This is the Crampton-Everett draft, printed above, with the alterations therein proposed by Fillmore as described in Crampton's quoted despatch of December 19, 1852.

[2] The British draft is that of January 15, 1853, printed above.

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After some discussion on the subject the alteration seemed to meet with the assent of Mr. Crampton.

The Second article gives to British Fishermen the same right to fish &c on the coasts of the U.S. with liberty to come &c on our Shores.

The third article relates to reciprocal free trade between the U.S. & the B.N.A. Provinces in the natural productions of each. There is in it an enumeration of the products &c to which this article applies. The great difficulty in negotiating the Treaty has been to agree upon the list of products.

Mr. Crampton urges the insertion on the list of the following articles viz. *Coal Metals—Skins pelts* and *tails* to which I have objected.

Coal. In some respects the admission of N. Scotia coal into the U.S. free of duty would be advantageous. It is bituminous—much more so, than any yet discovered in the U.S. and is therefore preferred by the manufacturers of Gas, to any kind of coal found in any part of the U.S. A large interest daily & rapidly increasing would be benefited by retaining this article on the schedule. On the other hand it is apprehended that the state on the Atlantic in which coal abounds and especially bituminous coal will be opposed to removing the duty upon the coal imported Nova Scotia Coal.

It is believed that Pennsylvania (the greatest coal state in the Un will) not be much opposed to this feature in the treaty for two reasons: First it has not much bituminous coal—the only kind which comes in competition with that of N. Scotia—in our market on the Atlantic border. The free introduction of coal into the B.N. Provinces—particularly Canada would create a good demand for the Anthracite coal of that state. The demand for that kind of Coal in Canada now considerable is rapidly increasing & will soon be very great; the principal source of Supply is in Pennsylvania. In balancing the amount of advantage & disadvantage I have no doubt that so far as Penn^{a} is concerned the former would greatly preponderate over the latter but with Maryland and Virginia I fear an opposite result, and from these states there would probably be strenuous objections to the admission of N.S. Coal duty-free. I have been told—that the Cumberland coal is preferable for the use of Steam Vessels and much of it is now used by the B. Steamers. Before the treaty is closed it will be proper to get more accurate information as to this fact.

August 2^{d} I met Mr. C. again and we spent about two hours in general discussions on the various provisions of the Treaty—particularly on the list of articles to be inserted on the free list. We agreed to insert several new one in it. *Lard Rice* &c. To these (except *Sugar* unrefined Mr. C. did not make any objection but I do not believe he will admit any of them until he learns the views of the home government.

I learned from him in this interview that he had written to Ld Clarendon for instructions on the propositions which I had previously submitted to him viz: to exempt the coasts of Florida from the privilege of B. Subjects to fish on our Coasts; and to extend the provisions of the Treaty to the Pacific coast. It is evident that Mr. C. does not see any serious objection but will not assent to these propositions until he is instructed so to do He is daily expecting a reply to his communication to the home government. In this interview Mr. C. read to me (in Confidence) his instructions [1] from Ld John Russell It does not appear from them that any point we object to is made a "*sine qua non*" but he is directed to insist upon retaining *Coal* on the list, & to getting the bounty to our Fishermen removed & the registry of B. built vessels when they become the property of American Citizens.

These are in truth the only obstacles to the immediate conclusion of the Treaty—the Coal Registry and Bounty.[2] On this day he handed to me a long

[1] Of January 15, 1853, cited above.

[2] Subject to a maximum of $360, the bounty to the cod fishery was payable at the rate of from $3.50 to $4 per ton per vessel for each yearly season (act of March 3, 1819, 3 Statutes at Large, 520; see also the act of May 26, 1824, 4 *ibid.*, 38; for earlier acts, see 3 *ibid.*, 49, footnote). The bounty was repealed by section 4 of the act of July 28, 1866, which also relieved fishing vessels from payment of duties on imported salt (14 *ibid.*, 328–31).

For the bounty regulations of the Treasury Department dated February 20, 1852, see Sabine Report, 152–54.

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printed paper being a communication from the Board of Trade [1] commenting much at large on the provisions of the *projet* of this treaty and presenting others matters in regard to commerce between these two Countries with a view to have some of them introduced into this treaty. This communication went fully into our commercial relations with G.B. After our interview I read it carefully and prepared myself to remark on it at our next meeting.

Wednesday 3^{d} August. I met Mr. C at 11 O'clock at our room where we resumed our Conferences.

I objected to embracing the new matters contained in the *printed* Instructions into this negotiation and Mr. C seemed to be willing to pass them by. We then discussed the articles on the list and added several to them—to-wit, *Lard Rice, Stone—unwrought Marble* &c. To these Mr C. did not make any objection but as he had no specific instructions in regard to them he did not explicitly agree to their insertion; but to *Sugar unrefined* he strenuously objected. On two grounds 1st Sugar was an article on which the colonies levied an impost duty; and if admit free from the U.S. they would be obliged to give up that duty. This would be a change in their financial system to which they could not consent. 2^{d} It would be impossible to distinguish between Sugar of American growth and that which was imported into the U.S. and taken thence to the Provinces & entered as a product of the U States. The discussion of these matters consumed our interview on the 3^{d} of Augt. The Meeting arranged for the 4th of Augt. was deferred until the next day. Mr I. D. Andrews having arrived on the evening of the 3^{d} I spent most of the 4th with him and in examining Documents & statistics which he with great labor prepared.

Following his conferences with Crampton, Marcy consulted Everett, who wrote from Boston on August 15, 1853 (41 Marcy Papers, 41830–31, excerpt):

I have yours of the 14th; & as I am to leave home for a few days tomorrow, I write you a hasty answer by return of mail; & I will perhaps write you more fully when I get back. I think, on general principles, it would be highly expedient to provide for fishing reciprocity on the Pacific; but how it would bear on *immediate interests*, I have no knowledge. *We* shall fill up so much faster than *they* will in British Pacific America, that the advantage can hardly fail to be on our side. We shall send ten fishermen to their waters for one they will send to ours. But it would be safer, before you commit yourself, to talk with some one who has local knowledge of the subject.

Florida is warmly opposed to having the reciprocity extend to her coasts, & I presume it is quite desirable to exempt them if possible. It cannot be of any great importance to the British; & if you let Crampton understand,—what I am told is the case,—that the opposition grows out of jealousies connected with Slavery, & not from any wish to contract their enjoyment of reciprocal fishing privilege, he will not I think object to the exemption.

Now with respect to the points on which you are at issue. I do not think you can give way on the subject of Registry. I was at first disposed to risk it, & got some opinions from practical men at the last in favor of it; but, on further enquiry, I was satisfied that the Shipping interest would not stand it;—I mean the ship-building interest. I believe they underrate their Capacity to compete with the Provinces, but these are things that cannot be forced. I wrote a private letter to Lord Aberdeen telling him that it was at present out of the question to admit their vessels to registry.

With respect to the Bounty, I am under the impression that it is of very little Consequence. Our deputy collector here last autumn, (who understood the subject thoroughly) told me, that it did not pay for the trouble of having the papers made out; & in many cases was not claimed by the parties entitled to it. If this is so, it ought not to be a cause of any difficulty. We need not tenaciously adhere, nor they tenaciously insist;—but I should rather get more light on the subject when I get back.

[1] Of April 20, 1853, cited above.

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With regard to Coal, I think our Pennsylvania & Virginia friends stand in their own light in refusing to admit it into the free list. Certainly the Pennsylvanians do, for the Province Coal is a different affair from the Penn* Anthracite & used for different purposes. We shall very soon send more coal into Upper Canada than we import from Nova Scotia.

My impression is, at present, that you may, without danger, give up the bounties, though I reserve the right of changing this opinion.[1] The subject was not discussed between Crampton & me. That if you cannot help it you may give way on Coal, though this will cost votes from Penn* & Virginia, when the Convention & the law to execute it are before Congress; & that you cannot admit their ships to registry. Crampton will tell you, if you do not, that they will be obliged to take from us the registry we now enjoy with them; but I doubt if they would,— & I do not think our ship builders would Care much if they did. But few of our vessels, thus far, have been sold in England.

Marcy had written that the "only obstacles" to conclusion of the negotiation were "Coal Registry and Bounty"; one of these, coal, Everett thought might be yielded; but Marcy did not at this time offer any concession, as will be seen from his note to Crampton of September 1, 1853, covering a draft in six articles; those two papers follow (D.S., 7 Notes to the British Legation, 381–400):

I deem it proper that a few explanatory remarks should accompany the *projet* of the Treaty which is herewith submitted to you. I shall be the more brief in presenting my views on the several subjects brought into notice, because they have been heretofore considered and discussed in our conferences.

In the draft now submitted, you will observe that the third article is a new one. This is inserted for the purpose of giving to the fishermen of the United States the reciprocal right to fish, &c., on the North West Coast of the British Possessions in North America.

By the second Article of the *projet* heretofore submitted by the British Government to the United States, and also by the same article of that submitted to you and by you referred to your Government, the right in common with the citizens of the United States is given to British subjects to take fish on "the sea coasts &c." of the United States without restriction. The right by that article is given to British Fishermen to take fish, &c., not only on the Atlantic Coasts but also on the Coasts of California and Oregon—on all our Pacific coasts and that of the adjacent Islands. I presumed it was merely an inadvertence that the Northwest as well as the Northeast coasts of the British Possessions on this continent were not opened reciprocally to our fishermen in common with those of Her Britannic Majesty. As the United States have proposed to open to British subjects their Pacific coast, it will be no more than fair and equal to grant to citizens of the United States a reciprocal right on the Pacific coast of Her Majesty's possessions in that quarter. I do not therefore anticipate any serious objection to the proposed new article, as it only supplies what I think was an accidental omission.

It is not on account of the value of the fisheries, but for other considerations, that I have proposed to except the coast of Florida from the operation of the second Article. Owing to the proximity of the Florida Coast to some of the Bahama Islands inhabited by free blacks, it is apprehended that the liberty granted to British Fishermen to come upon that coast and land on shore, these blacks and other Islanders would avail themselves of the opportunity thus afforded to interfere with the slave population of that State. Upon this ground, and, perhaps, to some extent, upon another—(an apprehended interference with the rights of wreckers)—it is believed that without such an amendment the opposition to the ratification of the Treaty in the Senate would be strong

[1] After making further inquiry, Everett soon changed this opinion; he wrote to Marcy on September 2, 1853, that "it would be a very ill-timed policy to take away the bounty" (D.S., Reciprocity Negotiations, 1848–1854).

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and might be successful in defeating it.[1] I have but little doubt myself that the right to fish in shore on the Florida coast, and to land for the purpose of drying and curing fish on that shore would be perverted occasionally to the purpose of facilitating the escape of slaves. To a large portion of the United States it would be regarded as an objectionable feature. It is therefore, in my opinion, not only proper in itself, but important to the success of our negotiation, that the exception which I have proposed should be acceded to. I am also assured that the right to British subjects to fish on the Florida coast is merely nominal, and that they would very seldom or never resort to it for that object, and if they should do so they would find very little encouragement in such a pursuit.

To guard against a misconstruction, perhaps scarcely to be apprehended, in that clause of the articles wherein the reciprocal right of fishing is given, I have added as you will perceive, after the words "fish of every kind" *except shell-fish*". It may be that without such an exception more comprehension might be attempted to be ascribed to the terms "fish of every kind" than is intended. Abundant authority can be found for saying that *oysters &c.* are a kind of fish. Should it be apprehended that our oyster beds along the coasts of the United States are to be opened to British fishermen—an effect not intended by either party it would excite strong opposition to the Treaty in many parts of the U. States. There might be objection also on the same ground in the British Provinces if it were apprehended that citizens of the United States could take oysters &c. on their coasts. The words I have introduced prevent all misapprehension which might otherwise arise on the subject.

The exception of my predecessor to the expression in the first article of the British draft, which prohibited the fishermen of the United States in curing their fish on shore, &c., *from interfering "with the operations of the British fishermen"* seems to me to be well taken. It is a comprehensive and indefinite phrase and may be interpreted to mean a greater restriction on our fishermen than either party now intends The modification of that clause which I propose will, I think, effectually secure the object desired, and I hope be readily accepted as a substitute. It is proposed to modify in like manner the corresponding clause in the second article. As the "estuaries and rivers" which are to be excluded from the operation of the first and second articles are to be specially mentioned, I trust no serious embarrassment will arise on this subject.

In both *projets* before submitted Newfoundland was omitted from the enumeration of the British Possessions to which it was intended to apply the stipulations of the treaty. In the draft now presented to you, that Island is included and I hope no serious objection will be made to this change; for, really I can see no good reason for its exclusion, but many cogent ones for including it. The insertion of this Island has involved the propriety of several other alterations too obvious to need explanation.

The third article of the draft of a Treaty furnished by Her Majesty's Government after examining the one submitted to you, by Mr. Everett I have as you will observe, wholly omitted in the accompanying projet. I will briefly state the reasons for this omission. The next succeeding article (that containing the free list of products,) proposes to admit among many other things, *"British Colonial fish of all kinds"* into the United States, free of duty. The omitted article amply provides for the same thing: It is, in this respect, superfluous; but it has an object beyond this in view for it requires the abandonment by the United States of their policy of granting bounties to their fishermen. This article presents distinctly one of the principal points of difference between us. I do not propose here to discuss this subject at large, but only to offer a few general considerations in regard to it. The bounty allowed by the United States,

[1] See the papers sent to the Senate on February 19, 1853, in response to a resolution requesting, *inter alia*, copies of applications made by the British Minister for permission to "British Bahamians" to fish in Florida waters, or "claiming the right for the colored emancipees of the Bahamas or British West Indies, if of the company or crew of a British vessel, to come within the waters and jurisdiction of the State of Florida" (Senate Executive Document No. 45, 32d Congress, 2d session, serial 665).

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as you are aware is not granted to all classes of our fishermen, but only to a certain description of vessels engaged in the cod-fishery. The continuance of this bounty will give no advantage whatever to our fishermen engaged in the herring and mackerel fisheries—the branches of that business which make it desirable to the United States to acquire the right proposed to be secured by the treaty under consideration. To the English subjects engaged in taking mackerel and herring, (that kind of fishing in respect to which American fishermen will be brought more directly into rivalry with them if the treaty should be concluded,) the bounty granted only to certain of our vessels engaged in the cod-fishery, must be a matter of indifference. It gives no aid to American citizens engaged in the mackerel and herring fisheries, and consequently works no injury to British subjects employed in the same fisheries. Besides, the amount of bounty paid to our fishermen is not large and is continued, as I have had occasion to state to you, mainly for the purpose of counter vailing the advantage that the fishermen of other nations have over ours on account of our salt duty. While British fishermen get their salt free of duty, ours are obliged to take it burdened with a duty of about 30 per cent ad valorem. Considering the quantity of salt used in curing fish, the British fishermen have a decided advantage over ours in this respect an advantage not much more than compensated, even in the cod-fishery by the bounty which the latter now receive. In other respects the British fishermen have irremovable advantages which place them beyond reasonable apprehension of a competition on equal terms from American fishermen. This is proved by the large quantity of British caught fish now brought into the markets of the United States notwithstanding the duty thereon compared with the supply of that article from our own fishermen. In our system of finance salt is a revenue article; and until our legislation shall place it on the list of free articles, it would be unjust towards our fishermen to withdraw the bounty which has for a long time been extended to them, and is necessary to enable them to enter fairly into competition with the fishermen of other nations engaged in taking cod. So far as other fishermen are concerned, they receive no detriment from the bounty, but in the mackerel and herring fishery derive an advantage from the continuance of our duty on salt. The withdrawal of the bounty might lead to the repeal of the duty on salt,—at least on that used in the fisheries,—and consequently the British Fishermen engaged in the mackerel and herring fisheries would lose the advantage they now have in those branches of the business, over our fishermen who are obliged to pay a higher price for the salt used in curing their fish.

The reciprocal clause proposed in regard to the use of the Canals in the United States, which is, as I presume, only intended to extend to such as the United States own or can control would be nugatory; for they have no interest in or direction over, any canals whatever. These canals are generally State works: some, however, belong to incorporations. The United States have no right to interfere with either. As income is the great object of those interested in these works, I cannot think there is any reason to apprehend that those who have the management of them will ever undertake to discriminate in regard to their use or on the rate of tolls between our citizens and other persons who may desire to avail themselves of these artificial channels of trade and travel. There would not be any objection to a stipulation engaging the Executive of the United States to apply to and urge upon, the State Governments to secure, by proper regulations or enactments, to the subjects of Her Britannic Majesty, the use of the several State canals on terms of equality with the inhabitants of the United States.

Another most serious point of difference which has arisen in this negotiation is that which relates to the proposition for the free registration in the United States of vessels built in the British Provinces, when such vessels become the property of American citizens. I have had occasion in our conferences to state the substantial objections to this stipulation, and do not propose here to go over the ground again. The shipping interest in this country, as it is in yours, is one of very great importance, and our Government look to it, and will watch over it with the deepest concern. The tendency of our legislation has been of late evidently towards a relaxation of restrictions upon foreign commerce; but its progress in that direction must be cautious and conformable to public opinion. Such an innovation in our navigation policy—such a material change in regard

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to the ship-building interest as is proposed, would not be wise, nor would it be sustained by those whose approval is required to secure success to the measure. Besides, the competition between the British Colonial ship-builders and those of the United States would not be waged on equal terms. Many of the articles used in the construction of vessels in the United States are, under our financial system, revenue articles, and of course are more costly here than in the British Provinces. I would allude particularly to iron and hemp. One of the direct and immediate advantages which British Colonial ship-builders would have over ours would be the amount of duty imposed by our tariff on dutiable articles used in the construction of ships. This duty is about 30 per cent. ad valorem, under our tariff. The value of such articles used in the construction of ships is very considerable; so much so as to place the British Colonial ship-builders on a better footing than those of the United States. Such a change would also be regarded as an alarming departure from a policy long established and much cherished in this country, and would array against any treaty which proposed it a powerful opposition, not only from those engaged in shipbuilding, but various other influential interests. The injury likely to result from it would, in the judgment of the country far outweigh all the advantages which would be derived to our citizens from the proposed treaty, irrespective of the many other concessions made to Great Britain on other subjects embraced in it. The main objection above presented to this article cannot be disposed of by alleging that the United States can, if they choose, remove, by legislation, the burden of the impost duty on articles used in the construction of ships, and in that way make the competition in that business between our ship-builders and those of the British Provinces more nearly equal and fair.

This would require a revision of our whole revenue system, and such changes as the Executive branch of our Government would not ask, because it could not approve, and such as Congress would not make.

I flatter myself that this article will not be insisted on; for if it is, I frankly say to you that in my opinion the contemplated arrangement which is in so many respects advantageous to both countries must be abandoned.

The proposition to allow British vessels to clear from ports in the United States to California and our possessions on the Pacific, is met by a constitutional objection which cannot be removed without leaving open to Her Majesty's subjects upon the Atlantic, as well as the Pacific, coast our entire coasting trade; and it will not, as I understand, in the face of this difficulty, be any further pressed.

The enumeration of the estuaries and rivers which are to be excluded from that clause of the first and second articles of the treaty granting common rights will be very long and attended with some difficulty, if the whole extent of our Atlantic coast is to be run over. I therefore suggest, after passing as far south as the southern point of the Coast of Massachusetts, the exception of these estuaries and rivers should be general. I propose to add to the enumerated list in the second article, after naming those estuaries and rivers north of the proposed point, the following clause, viz: "and all estuaries and rivers on the Atlantic coast of the United States south of the southern limits of Massachusetts".

I believe I have brought into view in the foregoing remarks all the material matters in regard to which there is likely to be any diversity of opinion, except those in respect to the enumerated articles to be admitted free of duty from the British Provinces into the United States, and vice versa. Our discussions upon these have been full, and I shall therefore be brief in presenting what I have to say on this subject.

The theory of the reciprocal branch of the treaty is a free exchange between the British Provinces and the United States of the natural and agricultural products of the respective countries. Rigidly carried out this theory would exclude all manufactured articles, and include all the natural and agricultural productions of each.

From the list of free articles in the accompanying draft of a Treaty, I have excluded all manufactures

In the schedule which had been previously considered, the article of printed books not subject to copy-right was included. As a fabricated article it seemed to be out of place, but, if desired, there would not, I conceive, be much objection to restoring it.

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The British *projet* inserted on the schedule as free articles "metal of ores": to this objections are made principally upon the ground of the indefiniteness of the term. Passing by the objection that it is a manufactured article, that of uncertainty as to its meaning in many cases, ought to be, in my opinion, conclusive. Scarcely any other term could be used and properly too which would designate so great a variety of objects. Among these objects may be specified gold, silver, lead, mercury, copper, tin, iron, zinc, palladium, &c., and it is applied to them in various states produced by labor and manufacturing processes. Blooms, pig-iron, steel and iron bars, might without much impropriety be denominated metals. The same difficulty would be found in regard to several other minerals.

If this article should be inserted in the treaty, I am convinced that innumerable controversies would spring up—and under it many invasions of the revenue laws of the respective countries would be sheltered. As I am not aware that any considerable interest in the Provinces will be advanced by retaining it, I trust that its insertion will not be insisted on.

As the principle of the reciprocity clause of the treaty is an agreement for a full and free exchange of the natural and agricultural productions of the United States and the British North American Provinces, all important products ought to be included in the schedule of free articles, and if any are omitted it should be done for special reasons. To the enumeration as presented in the former drafts there was a general objection which seemed to me likely to embarrass and defeat the adoption of the treaty. The list of free articles appeared to be selected without due regard to the interests of all sections of the United States. It had the aspect of being an arrangement for the almost exclusive benefit and accommodation of the British Provinces and the Eastern and some of the Middle States. Many of the staple products of the southern and South Western States were omitted. To the free list first made out, I have added rice, tar, pitch, and Turpentine. These are articles mostly of the growth of the Southern section of our Union, and I am not aware of any serious objection to placing them on the schedule. Should they be left off as well as sugar and tobacco, the omission in the treaty might with fairness and force be assailed on the ground of its marked sectional features.

On the part of the United States it has been proposed to omit *coal*, and on the part of Her Majesty's Government to omit unmanufactured tobacco and sugar I am fully persuaded that the reasons for excluding coal are quite as strong as any that have been or can be offered for excluding tobacco and sugar—and the interests of the United States are quite as seriously affected by striking the two latter articles from the free list as the interests of the British Provinces can be by the exclusion of coal. Coal of all descriptions is found in the United States and in some parts of them in great abundance: this product from our own quarries will meet the foreign article in all the markets of the United States; and when the numerous avenues for transporting this bulky article, now in the course of construction and contemplated, are opened, as they soon will be, that brought from the British Provinces will encounter a well sustained competition with it. This consideration, I admit, has a double aspect. While it shows that the British Provinces cannot have a very great interest in procuring a free introduction of their coal into the United States; on the other hand the United States cannot have a very great interest in preventing such introduction. But it is to be feared that those engaged in the coal business are not yet prepared to take this view of the subject. The owners of coal quarries were not long since, and probably are now very urgent for high duties upon foreign coal, as an incidental protection to their interest: they were sturdy opponents of our tariff law of 1846, because it reduced the impost on foreign coal, and have since urged an increase of such duty on that ground. From this class of citizens, who are numerous and influential in the three large States of Pennsylvania, Virginia, and Maryland, vigourous opposition may be apprehended to any treaty which stipulated for the introduction of coal free of duty from the British North American Provinces. Whether the effect they dread would be realized or not, is not the question to be settled; but as long as they believe it will be, they will oppose the treaty as strongly as if the effect was inevitable and such opposition might seriously endanger its ratification.

The object for retaining this article on the free list is not I believe so important to the British Provinces as has been imagined. The amount of coal imported

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from them into the United States in 1852—the last year for which there are full returns—was 87,036 tons, and the duty received on it only $48.330.

For this concession to the United States, which in the draft of the treaty herewith submitted I have assumed will be acceded to, I desire to direct your attention to the concessions which are made to the British Provinces. The two first items which I consent to have excluded from the free list, should coal be excluded are leaf tobacco and unrefined sugar. These are produced in the United States, and not in the Provinces—if freely admitted, they would meet with no competition from home produced articles; and the supply for the Provinces would be principally derived from the United States. A large market would be there opened to two of our staple agricultural products. The great advantage to the United States in establishing reciprocal trade in natural products with the British Possessions in North America is to open a market there for such of these products as are not grown or found in those possessions. It is certainly a great concession—far greater than is asked in return, to agree to exclude from the free list these two important productions of which there is a large amount consumed in that part of the British Dominions, and with which they would be almost wholly supplied from the United States.

I have also, as you will observe, included in the free list furs, &c., of which the British Provinces supply a large amount. These are appropriately revenue articles. They can in no respect be included among those things which in the present state of society, are regarded as the necessaries, or even the comforts of life. They are used mostly by those who can afford to pay and are willing to indulge in luxuries.

If tobacco and sugar are to be excluded upon the ground that they are revenue articles in the Provinces, and, if received free of duty, from the United States, the resources for the support of their respective Governments would be impaired, the consideration of giving up a revenue on an article very suitable for taxation might well be urged on the part of the United States for excluding furs &c. from the free lists. They are included however as a concession for which a compensating concession may be reasonably expected.

I am fully aware that by the operation of such a treaty as we have now under consideration many interests on each side will be injuriously affected by some of its various stipulations. It is but fair that concessions to one party should be met by concessions to the other. I think the draft here submitted is framed in a liberal spirit towards Her Majesty's Provinces—it gives as much as it proposes to take; but in its operations on the whole it will in my judgment be beneficial to both Governments.

Projet of Treaty.

The Government of the United States being equally desirous with Her Majesty the Queen of Great Britain, to avoid further misunderstanding between their respective citizens and subjects in regard to the extent of the right of fishing on the coasts of British North America, secured to each by the 1st Article of a Convention [1] between the United States and Her Britannic Majesty's Government signed at London, on the 20th of October 1818: and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's possessions in North America and the United States, in such manner as to render the same reciprocally beneficial and satisfactory, have respectively named plenipotentiaries &c. &c. who have agreed upon the following articles:

ARTICLE. 1.

It is agreed by the High Contracting Parties, that in addition to the liberty secured to American Fishermen by the above named Convention of October 20th 1818, of taking, curing, and drying fish, on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have in common with the subjects of Her Britannic Majesty, the liberty to take

[1] Document 40.

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fish of every kind except shell fish on the sea-coasts and shores and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Newfoundland, Prince Edwards Island, and of the several Islands thereunto adjacent without being restricted to any distance from the shore; with permission to land upon the coast and shores of those Colonies and the Islands thereof; and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided, that in so doing they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of said coast in their occupancy for the same purpose.

It is understood that the abovementioned liberty shall not extend to the right of fishing in the estuaries and rivers hereinafter designated, that is to say

which right is reserved exclusively for British fishermen.

ARTICLE. 2.

It is agreed by the High Contracting Parties, that British subjects shall have in common with the citizens of the United States, the liberty to take fish of every kind except shell fish on the seacoasts and shores of the United States, (except the coasts of the State of Florida, and the adjacent Islands) and on the shores of the several Islands belonging thereto, and in the bays, harbors and creeks of the United States and of the said Islands, without being restricted to any distance from the shore; with permission to land upon the coasts of the United States and of the Islands aforesaid, (except the coasts of Florida and the adjacent Islands) for the purpose of drying their nets and curing their fish: provided that in so doing they do not interfere with the rights of private property, or with the fishermen of the United States in the use of any part of the said coasts, in their occupation for the same purpose.

It is understood, that the above mentioned liberty shall not extend to the right of fishing in the rivers and estuaries of the United States hereinafter designated; that is to say,

which right is reserved exclusively for American fishermen.

ARTICLE, 3.

It is agreed that the reciprocal rights and privileges granted to the citizens and subjects of the High Contracting parties, in the two foregoing articles (first and second,) shall, to the full extent therein conceded, be enjoyed by them respectively; to take dry and cure fish of any kind except shell fish on the seacosts and shores; on the continental territories and possessions of either party; on the coasts of the Pacific Ocean, and in the bays, harbors and creeks of the said territories and possessions, and on the coasts and shores of the adjacent Islands belonging to either party without being restricted to any distance from the shores.

ARTICLE, 4.

It is agreed, that the articles enumerated in the schedule hereunto annexed; being the growth and produce of the aforesaid British Colonies or of the United States shall be admitted into each country respectively free of duty

Schedule.

Grain Flour and bread stuffs of all kinds.
Animals of all kinds.
Fresh, smoked, and salted meats.
Cotton-wool; Seeds; Vegetables.
Undried fruits, Dried fruits,
Fish of all kinds,
Poultry,
Hides; Furs; Skins or tails, undressed;
Stone and marble in its crude or unwrought state.

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Butter; Cheese: Tallow:
Lard: Horns: Manures.
Ores of metals of all kinds.
Pitch: Tar: Turpentine: Ashes:
Timber and Lumber of all kinds, round, hewed and sawed; manufactured in whole or in part.
Fire-wood,
Plants: Shrubs and Trees.
Pelts: Wool:
Fish Oil:
Rice; Broomcorn; Bark.
Gypsum ground or unground,
Hewn or wrought Burr stones,
Dye stuffs.
Flax, Hemp, and Tow unmanufactured.

ARTICLE 5.

It is agreed, that the citizens and inhabitants of the United States shall have the right to navigate the river St. Lawrence and the canals in Canada, used as the means of communicating with the Great Lakes and the Atlantic Ocean with their vessels, boats and crafts; as fully and freely as the subjects of Her Britannic Majesty; subject only to the same tolls and other assessments as now are or may hereafter be exacted of Her Majesty's said subjects; it being understood, however, that the British Government retains the right of suspending this privilege, on giving due notice thereof to the Government of the United States.

It is further agreed that if at any time the British Government should exercise the said reserved right, the Government of the United States shall have the right of suspending if it think fit, the operation of Article 4. of the present Treaty, for so long as the suspension of the free navigation of the river St. Lawrence or the canals may continue

It is also agreed, that the citizens and inhabitants of the United States, shall have the right to the free navigation of the river St. John, in the Province of New Brunswick, as fully and freely as the subjects of Her Britannic Majesty, and that no export duty or any other duty shall be levied on lumber or timber of any kind cut on that portion of the American Territory in the State of Maine, and watered by the River St. John and its tributaries and floated down that river to the sea when the same is shipped to the United States from the Province of New Brunswick.

ARTICLE, 6.

The present Treaty shall take effect whenever the laws required to carry it into operation, shall have been passed by the Imperial Parliament of Great Britain and the British Provincial Assemblies on the one hand, and by the Congress of the United States on the other; and shall be binding only so long as said laws, whether now existing or hereafter to be enacted, shall remain in force; and whenever the Imperial Parliament or the Provincial Assemblies on the one hand, and the Congress of the United States on the other, shall repeal said laws, or either of them, this Treaty shall cease to be binding on the other party. Either party may however, after the expiration of seven years, terminate the said Treaty, by giving to the other one years notice of its intention to have the same terminated, and become inoperative.

The treaty differs from the Marcy draft in these essentials:

1. The inclusion of Newfoundland was definitive in the Marcy draft (Article 1) and facultative in the treaty (Article 6).

2. In lieu of naming in the text the reserved rivers and estuaries, as proposed by Marcy (Articles 1 and 2), the designation of rivers and mouths of rivers is left by the treaty (Article 1) to a commission; in his covering note Marcy had referred to the difficulty of the enumeration.

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3. By the Marcy draft the liberty of fishing accorded to British subjects on the eastern coasts of the United States excluded the waters of Florida (Article 2); in Article 2 of the treaty the southern limit of the liberty is fixed at the 36th parallel of north latitude, or at Albemarle Sound, on the coast of North Carolina.

4. Article 3 of the Marcy draft, giving a reciprocal liberty of fishing in Pacific waters, is omitted from the treaty.

5. All the scheduled articles of the Marcy draft (Article 4) are in the treaty schedule (Article 3); and to them the treaty adds: products of fish and of all other creatures living in the water, eggs, slate, coal, grindstones, unmanufactured tobacco, and rags.

6. By paragraph 2 of Article 5 of the Marcy draft, the right reserved to the United States to suspend the operation of commercial reciprocity (if the free navigation of the St. Lawrence were suspended) is unqualified; in the treaty it is limited by the words "in so far as the Province of Canada is affected thereby".

7. The third paragraph of Article 4 of the treaty, regarding the navigation of Lake Michigan by British subjects and engaging the United States to urge upon the State Governments non-discriminating tolls on the State canals, is not in the Marcy draft; but the latter stipulation Marcy had offered in his covering note to insert.

8. Marcy's proposal (Article 5, paragraph 3) regarding the St. John River is modified in the treaty (Article 4, paragraph 4) by omitting the provision for free navigation.

9. The definite duration of the treaty is thereby (Article 5) fixed at ten years instead of seven (Article 6 of the draft); and so much of Marcy's wording as would have left the continuance of the treaty, even during the definite term, to the respective legislatures, was dropped; but Marcy told Crampton at the time that he was willing to omit this wording.

Most of the listed changes from Marcy's draft were, or at least proved to be, relatively minor concessions on the one part or the other; and the optional applicability of the treaty to Newfoundland did no more than delay for some months the effective date of the treaty in respect of that Colony. Of the seven items added to the schedule of non-dutiable articles, two were major, coal as an import into,[1] and unmanufactured tobacco as an export from, the United States.

Copies of the draft and covering note of Marcy were sent by him to Buchanan with this instruction of September 2, 1853 (D.S., 16 Instructions, Great Britain, 256–57):

> After many conferences between Mr. Crampton and myself in regard to the Fishery and reciprocity Treaty the points of difference are reduced to a very small number—to not more than three or four.
>
> I have submitted a draft of a treaty to Mr. Crampton which the President approves accompanied with a letter explanatory of his views on the remaining issues.

[1] The trade in coal was not all one way; American coal was exported to Canada (see Reciprocity and Commercial Treaties, 86).

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I understand that it is the intention of Mr. Crampton to transmit these communications to the home Government for advice and direction thereon. Should he do so it is probable that Her Majesty's Secretary for foreign affairs may be disposed to confer with you on this subject, I therefore send you a copy of the Draft of a Treaty which I have submitted to Mr. Crampton and of my letter to him for the purpose of putting you in possession of the views of the Government of the United States in relation to the differences still unadjusted. Should this subject be presented to you by the British Government or a fair occasion offer to you to bring it to the notice of Her Majesty's Ministers and to confer with them thereon, the President requests you to exert whatever influence you can, to induce them to yield in their instructions to Mr. Crampton to the views of your Government on the yet unadjusted articles of the proposed Treaty.

The despatch of Crampton to Clarendon covering the draft and note of Marcy was this (omitting the opening paragraph; F.O. 5:566, No. 151, September 5, 1853):

Mr Marcy enters so fully into the considerations, which have weighed with him in adhering, in many essential particulars, to the position taken by his Predecessors in office, as well as in proposing some fresh stipulations, that it will be unnecessary for me now to do more than advert to them in a summary manner, and to point out succinctly to your Lordship in what respects the proposals of Mr Marcy's present Draft differ from those of Her Majesty's Government embodied in the Draft of Treaty forwarded to me by Lord John Russell, with his Lordship's Despatch No 5 of the 15th of January last, and in the Memorandum drawn up by me in conformity with Sir J. Emerson Tennent's Letter to Lord Wodehouse of the 20th of April last, and communicated to Mr Marcy in June last.

It is proper, however, that I should in the first place state to your Lordship that Mr Marcy, in declining some of the proposals of Her Majesty's Government, has repeatedly remarked, that he did so, not generally from any objection which he himself entertained to them, or from the want of a due appreciation of the great mutual advantages likely to result from a still freer commercial intercourse between the two Countries, but, on the contrary, from a sincere wish to succeed in carrying into practical effect a measure which would conduce to that object. "Were such a measure", said Mr Marcy, "framed without reference to the "existing state of public opinion and the feelings, or even prejudices, if you will, "of the multifarious and sometimes conflicting interests of the different sections "of the Union, its production would be worse than useless. Such a measure, it "is true, might be in accordance with my own individual views, with those of the "President, and of most, if not of all my Colleagues—but it would certainly be "defeated—and its defeat would add strength to the Protectionist party and "tend to delay the very object we sought to attain. That party is certainly not "in a majority in Congress; it is nevertheless still powerful enough to obstruct "any measure tending to Free Trade, against which it might be enabled to bring "to bear the additional weight of any local interest, or interests, which might be "thought, erroneously or not, to be injuriously affected by it." He was confirmed in his opinion, he added, as to the expediency of not attempting to atchieve too much, from the Conviction which he entertained, that public opinion in the United States in favor of Free Trade was gaining ground and would continue to do so, if not checked by some untoward Circumstance. Consequently any shortcomings of the present measure, which he nevertheless thought was a great step towards free commercial intercourse with Great Britain, would in all human probability be ere long remedied by future Legislation or by additional Treaty arrangements. It was this consideration which led him to think it inexpedient to entertain at the present time the proposal I had conveyed to him (in the Memorandum above mentioned) for an enlargement of the basis of the negotiation including a revision of the Treaty[1] of 1815. It was the intention of the Administration to proceed, as long as they could gain the support of the Country, in

[1] Document 35.

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the direction of Free Trade, but, were it attempted to introduce into Congress measures of so extensive a nature in the form of a Treaty with a Foreign Power, it would call up prematurely, and in a way very disadvantageous to the Administration, a discussion of the whole question of the Revision of the Tariff:—and he would leave it to me, he said, who had been present in 1846 at part of the debates, which then took place on the Tariff question, to judge where that discussion would lead us.

With regard to the 6th Article of Mr Marcy's Draft, I may at once state to your Lordship, that I pointed out to him, and that he admitted the objection to which it was liable as there worded, viz:—that it left the duration of the Treaty dependent upon the passage of an Act of Congress on the one hand, or of an Act of the Provincial Legislatures on the other; Mr Marcy accordingly authorized me to say that he had no objection to the Article for the same purpose as worded in the Draft of Treaty proposed by Lord John Russell; with the exception, however, of the term of ten years thereby affixed the duration of the Treaty, for which he would propose to substitute a term of seven years.

I have inserted in red ink in the margin of Mr Marcy's Draft the Article, concerning the duration of the Treaty, as worded in Lord John Russell's Draft, in order that your Lordship may be able more readily to compare them.

I will now proceed to indicate the points in regard to which Mr Marcy's Draft differs from the proposals of Her Majesty's Government.

1stly In Mr Marcy's Draft, in the first Article, by which permission is accorded reciprocally to British and American fishermen to take fish on certain shores and bays &c therein designated, an exception is made in regard to shell fish.

2ndly Newfoundland is inserted as one of the British Colonies to which the provisions of the 1st Article apply.

3rdly In the Article 1 containing the provision by which the permission to cure and dry fish is granted to American fishermen on certain Coasts of the British Colonies, in place of the words "the operations of British fishermen", Mr Marcy has substituted the words "peaceable use of any parts of the said Coasts in their "occupancy for the same purpose".

4thly In the second Article of Mr Marcy's Draft giving to British fishermen the right of fishing on the Coasts of the United States, an exception is made in regard to the Coast of Florida.

5thly Article 3 of Mr Marcy's Draft is new, and proposes to extend the mutual right of fishing to the Coasts of the United States, and of British territories on the West or Pacific Coast of North America.

6thly Mr Marcy's Draft omits any engagement for the discontinuance of the Bounties accorded to American fishermen.

7thly In Article 4 containing the Schedule of productions of the United States and the North American Colonies to be admitted mutually free of duty, the Articles Coals, printed Books, and Metals are omitted in Mr. Marcy's Draft; and the Articles rice, pitch, tar, turpentine, lard, stone and marble are added.

8thly Mr Marcy's Draft contains no Article granting the privelege of American registry to British and Colonial built Vessels.

9thly A new Article is proposed in Mr Marcy's Draft granting to American Citizens the free navigation of the St John's river, and the abrogation of all export duty on American lumber floated down that river, if exported to the United States.

Your Lordship will perceive from a perusal of Mr Marcy's Note, and from the above Comparison of his Draft of Treaty with the proposals of Her Majesty's Government that the Government of the United States is not disposed to yield in regard to the three principal points, upon which I was directed to insist—viz: the admission of British Vessels to American registry, the abrogation of the duty on Colonial Coal, and the discontinuance of the bounty to American fishermen. As a setoff to the continued insistance of the United States Government on these points, without adverting for the present to several concessions, now urged upon Her Majesty's Government for the first time, Mr Marcy does not seem prepared to offer any other equivalent than the withdrawal of the objection taken by Mr Fillmore to the admission of the Article "Furs, tails, &c" in the Schedule to Article 4, and the withdrawal of the proposal of Mr Everett to insert therein the Articles sugar and unmanufactured tobacco.

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It is not necessary for me to point out the inadequacy of these concessions, and I could not help remarking to Mr Marcy that however sincere was the desire of Her Majesty's Government to enter into a liberal Commercial arrangement with the United States, and however fully they appreciated the difficulties against which the American Government had to contend in devising a measure likely to unite the suffrages of the varied interests of the Union, there were points of the proposed arrangement to which it did not appear to me that Her Majesty's Government could agree consistently with a due regard to the interests and wishes of several of the Colonies affected by the arrangement.

Mr Marcy's proposal, however, is accompanied by considerations, which I think it my duty to make known to your Lordship and I did not hesitate in complying with his request that his project should be submitted to Her Majesty's Government.

The interval which will elapse before the meeting of Congress, in December next; and consequently before any Treaty could be concluded and ratified will afford sufficient time to Her Majesty's Government for a full consideration of the question, and for transmitting to me any further instructions with which Your Lordship may be pleased to honor me on the subject.

The draft of Marcy, differing as it did so widely from the British proposal, was not liked at the Foreign Office; on October 25 Buchanan had a conversation with Clarendon which, so far as here relevant, he thus reported (D.S., 65 Despatches, Great Britain, No. 14, November 1, 1853):

On Tuesday last I met the Earl of Clarendon by appointment at the Foreign Office; and, upon the whole, our interview was highly satisfactory.

. . . . . .

I then told him that Governor Marcy had informed me, he had submitted to Mr Crampton a projet for a Fishery and Reciprocity Treaty to be submitted to the British Government; and asked him if he had received it. He said he had and had written to Mr Crampton that the Treaty did not appear to him to be a reciprocity Treaty. I told him that I had no instructions to negotiate with him on these questions; but I should be most happy to afford him any information in my power in relation to them. I stated if I were to express an opinion, the American Government might with at least equal justice complain that it would not be a Reciprocity Treaty. Why, said he, you still insist upon giving a bounty to your fishermen and with this advantage ours cannot fairly compete with them. I replied that a bounty was granted to the Cod Fishery alone, and that it should be borne in mind that these fishermen had to pay a duty of thirty per cent ad valorem on their salt from which British fishermen were relieved. That this bounty was but little, if any more than equal to the duty which our fishermen paid upon their salt. That in the Mackarel and Herring fisheries there was no bounty paid and in regard to these the British fisherman enjoyed a great advantage over the American; inasmuch as the latter paid a duty of thirty per cent on their salt from which the former were relieved. That the British, from their vicinity to the Fishery grounds, would always possess advantages of which the Americans must necessarily be deprived. The justice of this remark appeared from the fact that the British fisheries were in a flourishing condition and notwithstanding the duty which they now paid a large quantity of British caught fish were brought into the markets of the United States, compared with the supply of that article from our own fisherman.

He observed that the British Colonists were of a very different opinion and complained loudly of what would be the effect of the Treaty on their fisheries. That he had ordered tables to be made from official documents shewing what was the actual state of the trade between the Colonies and the United States, and these tables would doubtless prove satisfactory to both Governments, as we should then both know what we were about.

I stated that the growth and present condition of the British Fisheries could be ascertained with certainty from the Treasury Reports of the United States and I should be happy to procure this information for him.

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He still repeated that he did not consider the Treaty a Reciprocity Treaty; but spoke alone of our bounties to the Cod Fishery, on which he seemed to lay great stress. After repeating to him my explanation on this subject, I expressed the opinion that the privelege to British Colonial fisherman to supply a population of Twenty-five millions of people annually increasing at a rapid rate with fish free of duty would of itself be more than an equivalent for their grant of the shore fisheries to our fisherman; and then observed, that the Treaty would yield to them great additional advantages in the reciprocal free trade between the United States and their Colonies. No man could examine the schedule which it contained, without perceiving these advantages. From this schedule our two important agricultural articles of Sugar and Tobacco had been omitted and would still Continue to pay a duty in the Colonies; whilst their grain, flour, and, I believed, every other agricultural article produced in the Colonies, would be admitted into the United States, free of duty.

He replied that the Colonists required a duty upon Sugar and Tobacco to support their Governments; and I answered that whatever might be the necessity for this duty, the effect would still be the same on the Tobacco growing and Sugar planting interests of the United States.

In another conversation with Buchanan on January 6, 1854, Clarendon reiterated his objections to the project of Marcy, and Buchanan went so far as to suggest verbally a treaty of a single article; this conversation was reported in Buchanan's despatch of January 10, 1854, which in part, with Buchanan's draft of his suggestion (sent to Marcy, but not to Clarendon) follows (*ibid.*, No. 20):

Some remarks of His Lordship favorable to our naval expedition to Japan introduced the name of Commodore Perry. He then took occasion to repeat to me the handsome things which Sir George Seymour had said to him concerning that gallant officer, as well as his successor Commodore Shubrick, for their conduct on the Fishing grounds during the years 1852 & 1853.

Availing myself of this introduction of the subject, I asked his Lordship what he had done in regard to Secretary Marcy's projet of the Fishery & Reciprocity Treaty communicated to him by Mr Crampton. His answer was unfavorable to its success. He said we wanted to drive too hard a bargain with them & one which was unacceptable to Nova Scotia & their other North American Colonies. After endeavouring to convince him, but without apparent success, that the bargain which we had offered was not hard, but in the highest degree, liberal;—I said, "My Lord! the British Statesman, particularly at the present momentous crisis in the affairs of the world, who shall be instrumental in settling all the questions pending between the two Governments, on fair & honorable terms, & thus converting Great Britain & the United States into nations kindred in friendship, as they already are in blood, will do more for his Country, & indeed for both Countries than any Statesman who has arisen in England since the days of Lord Chatham". He interrupted me by a cordial & enthusiastic response to this remark; but observed, that the American people seemed to entertain a strong prejudice against England which it would be difficult to remove; & I must admit this was not shared by the English people against the United States. I replied that I could not speak on this subject from personal observation, my intercourse with British society having as yet been comparatively limited; but that in a free Country, the Public Press necessarily reflected public opinion,—and judging by this standard, I could not admit that the British people were very friendly to the United States. Here a conversation intervened of a good natured character on the relative regard of the people of the two Countries for each other;—which I need not repeat.

I, then, proceeded to remark that there was great danger of serious collision on the Fishing grounds. Under their construction of the Convention of 1818, American fishermen were excluded even from the great Bays or arms of the Sea; whilst under our Construction, these fishermen had a clear right to enter all Bays more than six miles wide at their mouth in pursuit of fish. Our fishermen were a class of people always ready & willing to assert what they believed to be

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their rights; and in consequence a collision might take place any day, which would seriously endanger the peace between the two countries. That this danger ought, if possible, to be avoided.

He said he heartily concurred with me in this opinion; but again repeated his objections, in the same general terms, to your Projet. In answer, I employed such arguments as I thought would be most available in enforcing the reasonable & liberal character of the Projet; but they did not seem to make much impression. Still, he appeared very anxious that some mode should be devised to avert the danger of a collision which might prove less objectionable to the Colonies.

I then told him he knew I had no authority to negotiate upon this subject; but I would make a suggestion on my own responsibility, without in the slightest degree, committing my Government, which he might take for what it was worth. He said he would be very glad to hear it;—that whatever was done on this question would necessarily be subjected to a severe criticism from the people of both nations.

I observed; why not adopt a single article in regard to the Fisheries for a brief period which would bear its own justification on its face to the people of both Countries. Let this simply state that in consideration of the grant made by Great Britain to the Citizens of the United States of the Shore Fisheries, the United States, on their part, grant, that British caught fish shall be admitted into their ports free of duty: & that, in addition, there shall be a reciprocal free trade between the British Colonies & the United States in the articles, enumerating them, contained in your schedule.

The thought appeared to strike him favorably; & he asked me to repeat the suggestion, which he took down in writing.

I observed that a simple provision of this kind for a few years would avoid any immediate danger of collision; & I was persuaded that the Colonists, once in the enjoyment of the advantages which such a Treaty must afford, would desire that it should be continued. He said that if they should prove to be dissatisfied, the Treaty might be terminated after a brief period. We then went off into a conversation on the advantages to the Colonists of a free trade in fish, as well as in the other articles enumerated in your schedule in which I endeavored, as I had done twice before, to convince him of its great value to them. The only specific objection which he made to my suggestion was the danger of collision between American & British fishermen, if the former had the right to dry & cure their fish on the shores. This I obviated by stating, that without the consent of the owners of the property, this right could not be exercised by American fishermen; & that when the question was once settled, the parties would mutually respect each other's rights & not interfere with any previous occupancy.

I am persuaded that it is the strong opposition of the Colonists, and especially those of Nova Scotia, which has prevented the conclusion of your Treaty.

I was somewhat surprised at the apparent favor with which this suggestion was received by Lord Clarendon. This, I am convinced, arose from the clear presentation, in juxta position, of the quid pro quo which such an article would exhibit to the Colonists & to the British public. It could not have been from any other cause; inasmuch as the article would assure to American fishermen all the rights specified in the Projet; would relieve us from the embarrassing concession to British fishermen of the right to take fish on our coast, estuaries & rivers, as well as from the question of bounties; and, above all, it would waive the claim to the registration in the United States of vessels built in the British provinces,—a claim which ought never to be yielded.

Perhaps, I may have gone too far in the suggestion. It was not made until I had clearly ascertained His Lordship's (I think,) unreasonable repugnance to your Projet. The discussion, in any event, can have done no harm. On the contrary, I am persuaded it gave him a stronger impression than he had before of the importance of an early settlement of the Fishery question.

I have drawn up such an Article as I intended to suggest. At the first, I thought of sending it to his Lordship; but, on reflection I concluded this would be going too far. I now transmit it to you. It has not been prepared with much care & is only intended to present the general idea in a more specific form. Perhaps, in the event that your projet should finally fail, something may be made of it; & I might then be able to induce Lord Clarendon to send it to Mr Crampton for your approbation.

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The only objection to the article which I can conceive is, that it would not confer upon American caught fish the privilege of being imported into the Colonies free of duty. I presume, however, that this privilege would be but of little value to our fishermen. It is, also, possible his Lordship might consent to insert "Fish of all kinds" in the list of free articles, as it is in your schedule; & this would remove the difficulty. This point was not adverted to in our conversation. Still my impression is, that the favor with which the suggestion seemed to be received was because it presented a substantive consideration for the grant of the shore fisheries, in the free admission of British caught fish into the United States, which was not to be impaired by the reciprocal privilege of admitting American caught fish free of duty into the British provinces. In that I may be mistaken, as I repeat, there was no allusion whatever to this point.

[Enclosure]

In consideration that Her Brittanic Majesty, in addition to the liberty secured to American fishermen, by the Convention between the parties of October 20th 1818, hereby grants to the inhabitants of the United States the liberty, in common with her own subjects, to take fish of every kind on the Sea coasts, & shores & in the Bays, harbors & creeks of all Her Majesty's Atlantic Colonial possessions & Islands, in North America, Newfoundland included, without being restricted to any distance from the shore; The United States on their part, grant, that all the fish of every kind caught by British subjects, on the sea coasts & shores & in the Bays, harbors & creeks of Her Majesty's said Colonial possessions & Islands, Newfoundland included, shall be admitted into the Ports of the United States free of duty. And it is furthermore agreed between the Parties that the following articles being the growth & produce of the aforesaid British Colonial possessions & Islands or of the United States, respectively, shall be reciprocally admitted free of duty into the Ports of the said Colonial possessions & Islands & into those of the United States;—To wit, "Grain, flour & bread stuffs of all kinds" &c &c &c.

It is understood, however, that the permission which Her Brittanic Majesty hereby grants to American fishermen to land upon the coasts & shores of all the aforesaid British Colonial possessions & Islands & of their Bays, harbors & creeks for the purpose of drying their nets & curing their fish shall never be construed or employed, so as to interfere with the rights of private property, or with British fishermen in the previous occupancy of any part of the said Coasts & shores for the same purpose.

After some months of deliberation at London it was there thought that it would be best to suspend the negotiations "for a while"; the views of the British Government were expressed in this instruction to Crampton of February 2, 1854 (omitting the opening paragraph; F.O. 115 : 136, No. 19):

Her Majesty's Government have given their most anxious attention to that counterproject and to the observations with which you state that it was accompanied on the part of Mr Marcy, in the earnest hope that they might discover some element of compromise by which they might be enabled to reconcile the restricted propositions of the United States Government with the wider and more equal Conditions submitted on the part of Great Britain, and with the reasonable expectations of Her Majesty's Government. But I regret to say that in this hope they have hitherto failed.

Her Majesty's Government give full credit to Mr Marcy and to his Government for the sincerity of their desire to establish the commercial relations of the two countries upon a broader and freer basis than that on which they now stand; and they rejoice to see, and readily admit, that that sincerity is exhibited by the projected reductions in the present United States' Tariff of duties which you have brought to their knowledge. But it is obvious that in matters of inter-

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national negotiation, positive and tangible Concession on one side, must be met by equal Concession of the same character on the other side; and that prospective and unsubstantial hopes held out to the one party Cannot be taken to Countervail solid advantages legally secured by treaty to the other party.

Mr Marcy observes that by embodying in a treaty the concessions required on the part of Great Britain and the British Colonies, there will be great risk of that treaty being rejected by the United States' Legislature. But it must be borne in mind that if the United States' Government is amenable to public opinion as expressed in the United States Legislature, so also is the British Government compelled to consult public opinion as expressed in the British Legislature, and they would render themselves justly liable to public censure if they consented to give up present and positive, for prospective and uncertain, advantages.

Having premised thus much, I will proceed to state the points in which we find it impossible to agree to the terms now proposed by Mr Marcy.

In Article 2. of Mr Marcy's Counterproject, in which the right to fish on the coasts of the United States is secured to British subjects, an exception is taken with regard to Florida and the adjacent islands, which it is proposed to exclude from the operation of the article.

To this arrangement Her Majesty's Government cannot assent. The reasons assigned by Mr Marcy for pressing the exclusion of Florida may be valid in the American Sense; but the proposed Convention is purely commercial, and must be considered in a commercial view only by Her Majesty's Government. With other Considerations they have nothing to do. If the right accorded to United States citizens to fish on the coasts of the British North American colonies be general, so also should be the Counter-right accorded to British subjects to fish on the Coasts of the United States.

In Article 3 of Mr Marcy's Counter project it is proposed to include in the General and mutual right of fishery to be conceded by treaty the coasts of the Pacific Ocean. To this proposition it would be difficult, if not impossible, for Her Majesty's Government to accede, because the Crown has already conveyed by Royal Charter to the Hudson's Bay Company the Colony of Vancouvers Island, together with the fisheries in the seas, bays, inlets and rivers, within or surrounding that settlement, as well as all the royalties of the seas and coast within the limits of their Grant.

In Article 4, containing a schedule of Articles being the growth or produce of the British Colonies or of the United States to be admitted into each Country respectively free of duty, the articles Coals and metals, for which we had contended, and which we cannot relinquish, are omitted: printed books are also omitted.

Article 6 of the English Draft of treaty stipulating for the admission of British built vessels to the privilege, under certain conditions, of United States registry, in like manner as United States vessels are admitted to British Registry, is altogether omitted in Mr Marcy's Counterproject.

On The other hand, the stipulation for the admission of United States citizens to the free Navigation of the St Laurence and the Canadian Canals is expanded on the part of the United States Government by the proposed inclusion in the same Article of the St John River. To that inclusion Her Majesty's Government Could not agree.

Thus, with the exception of one Concession which Her Majesty's Government had claimed in the article of "furs", and which was so insignificant that it was inserted in the proposed free list of the Tariff, the United States Government rejects all the propositions of Her Majesty's Government, while it puts forth claims itself to considerably extended Concessions on the part of Great Britain.

Under these circumstances it appears to Her Majesty's Government that it would be fruitless to continue the negotiations on their present footing and with the little chance of success which they hold out of coming to a satisfactory conclusion. Nevertheless Her Majesty's Government would be loath to break off the negotiations, and would prefer rather to suspend them in the hope that time may improve the chance of coming to a better understanding; and in the mean time the prospect may, in the opinion of Her Majesty's Government be materially improved by mutual legislative action of a liberal character on the part of the United States, and of the Legislatures of the North American Provinces. The

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United States' Government are advancing in earnest in the path of Commercial freedom upon which Great Britain entered some years since, and in which she has persevered with such unquestionable advantage to herself and to the world; and this great step on the part of so powerful a Nation as the United States, and one whose commerce reaches to every corner of the Globe, must necessarily tend to smooth the way towards mutual commercial concessions on the part of Great Britain and the United States, without which no treaty Could be concluded, or, at all events, could be formed on a solid and enduring basis.

You will communicate to Mr Marcy the Conclusion to which Her Majesty's Government have come, as above stated; namely that in our present divergence of Views, it may be better to suspend for a while the pending negotiations until we can see our way more clearly towards an approximation of those views; And you will at the same time express to Mr Marcy the earnest hope of Her Majesty's Government that the moment of such approximation may not be far distant; and assure him that it will be the constant and earnest wish of Her Majesty's Government to place and maintain the Relations of the two Governments and Countries upon the most liberal and friendly footing.

In part, the foregoing instruction was read by Crampton to Marcy early in March; Marcy, while now thinking that the negotiation might fail, did not yield or modify his position; but in this instruction of March 11, 1854, he expressed his willingness to make, if necessary, a temporary arrangement such as Buchanan had suggested (D.S., 16 Instructions, Great Britain, 274–83, excerpt):

The negotiation for the Fisheries and reciprocity of trade with the British North American Colonies has been suspended for more than five months in consequence of the delay on the part of the British Government to act upon the projet of a treaty which I submitted to Mr. Crampton early in September last. It was supposed until lately that this delay was owing to the time required by Great Britain to ascertain the views of the several provinces on the subject but I now have reason to believe that the Home Government has but very recently taken any steps to become acquainted with these views and that it has finally without much reference to the wishes of the provinces, declined our overtures unless we will yield almost every point of difference which arose in the progress of the negotiation. Within a few days past Mr. Crampton read to me part of a despatch [1] from Lord Clarendon from which I infer that there is no desire on the part of the Home Government to conclude the proposed Treaty. The despatch stated that the Provinces were now prosperous and much less solicitous than they had been for reciprocal free trade with the United States.[2] It insisted that "coal" and "metals" shall be inserted in the list of free articles. The propositions to grant to our citizens the free use of the River St. John—to except the coast of Florida from the use of British Fishermen—and to open the British coast of the Pacific to our Fishermen in common with those of Great Britain are all peremptorily overruled, and with no reason assigned therefor, except as to the latter, and the reason assigned for overruling that proposition is, that the right to fish about Vancouver's Island had been granted to the Hudson's Bay Company. Not much [3] was said in the despatch in relation to the surrender of the Bounty upon the cod-fishery but the admission of Colonial built vessels to free registration in the United States when they become the property of our citizens was much insisted on.

The language of the despatch conveyed clearly to my mind the impression that the registration of Colonial built vessels was regarded as a *sine qua non*. If this be so then the negotiation must fail for that point cannot be yielded.

Lord Elgin, the Governor General of Canada, is, I believe yet in England, and Mr. Hincks the Inspector General of that Province has recently sailed for England and expects to be absent about three months. Mr. Hincks has heretofore been much consulted on the subject of this Treaty and great consideration

[1] The instruction of February 2, 1854, quoted above.
[2] Doubtless Crampton so remarked; no such statement is in the instruction.
[3] Nothing, in fact.

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has been given to his opinions. I understand that he is still hopeful of the success of the negotiation. He probably understands as well as any other individual the views and wishes of the several Provinces; and it is barely possible that he may exert a favorable influence upon the Home Government in this matter. But as there is however, a probability that no treaty will be concluded, it is proper to consider what, in that event will be the condition of things on the fishing grounds in the approaching season. The citizens of the United States having enjoyed the undisturbed and unquestioned right to fish in the large and open bays along the coast of the British North American Provinces for nearly a quarter of a century after the conclusion of the Convention of 1818, this Government will not yield to the more recent construction of it whereby they are excluded from these bays—it will maintain the cotemporaneous practical construction given to that compact by both parties. Not until within ten or twelve years was any question raised as to the rights of our fishermen to resort to, and take fish in, these bays. Should Great Britain persist in her recent construction of that Convention, and attempt to prevent our fishermen from taking fish in the open bays, a collision can hardly be prevented. The United States will claim for their fishermen this right and feel bound to maintain it at any hazard.

The Convention of 1818 excludes the citizens of the United States from the in-shore fisheries—that is from taking fish within a marine league of the British shore; but it cannot be expected that they will in all instances respect this boundary. This business of fishing has very much changed of late years. When the Convention of 1818 was entered into the taking of cod was the all-important branch of the fisheries; but now it is superseded in point of importance by the mackerel and herring fishery. More vessels are fitted out in the United States for taking mackerel and herrings which are mostly caught in-shore than for cod fishing. Our fishermen, when they fall in with shoals of them, will not resist the temptation of following them within the shore limit fixed by the Convention of 1818. Though the right of Great Britain to keep them beyond that limit cannot be questioned, force alone can effect the object. Owing to the great extent of coast, quite a number of armed vessels will be required for this service.

Disputes will constantly arise in regard to the true line of exclusion. Embarrassing questions of this kind have already arisen and produced unpleasant discussions between the two Governments. Such cases will prove a constant source of irritation and controversy and may disturb their peaceful relations.

For the last two years great pains have been taken to inculcate a spirit of forbearance on both sides. On the part of our fishermen a disposition was manifested last year to go on their fishing trips prepared to maintain their rights, as they understood them, by force of arms; but by the interposition of the Government, accompanied with the assurance that negotiations were on foot by which their rights would probably be extended, and that any collision would be sure to defeat that object they were prevented from carrying out their design. When such an inducement can no longer be presented to them there will be reason to apprehend a less cautious and prudent course on their part. They will bring the question of their right to fish in the open bay to a direct issue.

As soon as it is ascertained that the difficulties in relation to the fisheries cannot be arranged by negotiation this Government will prepare to sustain our fishermen in the assertion of all their rights on the coasts of the British Provinces; and these rights are regarded here to be more extensive than those conceded to them by Great Britain or the Provinces.

The President expects that you will avail yourself of any proper occasion that may offer, to impress upon Her Britannic Majesty's Ministers the impotance of having all disputed questions as to the Fisheries adjusted as well as other matters. If the negotiations for a treaty should fail, the British Government should consent to abandon her pretension to exclude our fishermen from the open bays along the coast of her North American Provinces.

The United States, in case of a failure to make a permanent arrangement on this subject, would find no difficulty in entering into a temporary one,—in substance such as you suggested to Lord Clarendon.

In the meantime Buchanan had talked again with Clarendon on March 16: "Neither did I forget the Fishery Question and the danger

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of collision on the Fishing grounds, should he not furnish Mr. Crampton instructions which would enable him to settle it before the commencement of the approaching season" (D.S., 65 Despatches, Great Britain, No. 25, March 17, 1854); and receipt of Marcy's instruction of March 11 was followed by an interview at the Foreign Office on April 11, of which this account is given by Buchanan (*ibid.*, No. 29, April 14, 1854, excerpt):

I then determined that, in conformity with the spirit of your Despatch of the 11th ultimo, I would have a plain conversation with his Lordship on the Fishery question. I said I had observed a statement in a New York Journal that Governor Marcy & Mr Crampton were on the point of concluding a Treaty to settle this question & I should be rejoiced to learn that the statement was well founded. He asked what provisions this Treaty was supposed to contain; & I answered that the Journal did not enter into particulars. He observed he was sorry to say there could not be any foundation for this report, as he had informed Mr Crampton some time ago that Governor Marcy's projet could not be accepted by the British Government, without material alterations. It had encountered the decided opposition of the British Colonies, whose interests they were bound to consult. I stated that the question of the Fisheries was a most serious question & well worthy of his Lordship's profound attention. The destinies impending over the civilised world, at the present moment, seemed to be full of danger; & complications already existed which human sagacity could neither foresee nor avoid. In addition to existing embarassments I should not be astonished, on any day, to learn that a collision had actually taken place on the Fishery grounds between Her Majestys Cruizers & our Fishing vessels. If in such a collision, American blood should be shed, this would excite & electrify our whole population & might produce the most unhappy consequences. That after our fishermen had enjoyed, for a quarter of a century, the right to fish in the large & open bays along the coasts of the British North American Provinces, under what we believed to be a correct construction of the Convention of 1818, the British Government had suddenly & without proper previous notice, sent a naval force to arrest us in the exercise of this right & to enforce a new construction of the Treaty. Had General Jackson then been President, an immediate collision would have been inevitable. If they should still persist in this construction of the Convention & attempt to prevent our fishermen from taking fish in the open bays, a collision, during the present season, could hardly be avoided. This right the American Government will claim for them & feel itself bound to maintain at any hazard. These fishermen had manifested a disposition, during the last season, to arm their vessels & maintain by force what they believed to be their rights; but in consequence of the interposition of our Government, they were prevented from pursuing this course, in the hope that the negotiations then pending would lead to a satisfactory result. After this hope shall have been abandoned, it would be difficult to restrain them from arming in their own defence. I also informed him I had held a conversation on this subject with Lord Ellesmere [1] who was sensibly alive to the dangers of a collision & was most anxious to prevent such a catastrophe, if possible. He understood the subject perfectly, his son having commanded one of the British cruizers during the last two seasons whose disagreeable duty it was to pursue American Fishing vessels & prevent them from passing the line which had been prescribed for them by the British Government.

His Lordship listened to me with marked attention & seemed solemnly impressed with what I had said. He entirely agreed with me that a destiny did indeed appear to threaten the civilised nations of the world which human prudence & honest efforts had in vain endeavored to avert. He spoke, in the highest terms of Lord Ellesmere & said he was as anxious as his Lordship could be to prevent a collision & to settle the question. He then asked, whether I had received any answer from Governor Marcy with respect to the suggestion which had been made by me for a temporary settlement of this question. I told him I need scarcely repeat that this suggestion had been made without instructions & was

[1] The Earl of Ellesmere (1800–1857) had held no office since 1830.

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dictated solely by a desire to avoid the dangerous consequences of a collision on the Fishing grounds; & that it was not made until I had ascertained from him that a more general & permanent arrangement was probably out of the question. Premising this, I said I had heard from Governor Marcy on the subject; & if nothing better & more permanent could be accomplished, he would be willing, in order to ward off impending danger, to enter into an arrangement substantially such as I had suggested. Whilst in manner expressing his gratification with this information, he seemed carefully to avoid any committal;—again spoke of the opposition of the Colonies & said they would object to any arrangement which did not embrace reciprocal trade, thus in fact returning to the original projet. I told him I believed it was Nova Scotia which chiefly opposed the settlement of the Fishery question; & if I had been correctly informed, the Novascotians caught but few fish & had comparatively but little interest in the matter. He said he believed this was the fact; but that I was mistaken in supposing that the other Colonies did not share the same feelings with Nova Scotia, & he specially mentioned Canada.

I could have wished at the moment I had possessed authority to propose to conclude a Treaty with him immediately based upon my suggestion which he had appeared to regard with so much solicitude & favor. As it was, I deemed it expedient to say that should he determine to instruct Mr Crampton to enter into such a Treaty with Governor Marcy, I would write to the Governor & other official friends & advise the acceptance of the offer as a temporary measure, in view of the threatening crisis.

It is worthy of remark that Mr Hincks has not called upon me since his arrival in England.

A report to the Admiralty made by Vice Admiral Seymour under date of March 24, 1854, which was almost certainly in the hands of Clarendon by April 11, included these paragraphs (F.O. 115 : 137, No. 82, April 17, 1854, enclosure):

With regard however to the future, it deserves notice that Mr Marcy's message to me through Mr Crampton, that there was no intention of contesting the only controverted point in the Convention of 1818, during the last season, under the hope that it might be arranged by negociation, does not extend to this year, & that Mr Dobbin, Secry of the Navy in his instructions to Commr Shubrick (page 5)[1] asserts that the restriction was not designed to be applicable to George's Bay, Miramichi, or Chaleur,[2] in the President's view of the Construction of the Convention.

I am not aware that any attempt has been made to exclude American Fishermen from the Straits of Northumberland[3] to which Mr Dobbin also refers, but the 3 other bays appear to me clearly such as the U.S. Fishermen have no right to enter except for the purposes specified in the Convention, & the pretension if renewed will occasion difficulties.

I should also bring to their Lps observation the fact that Commr Shubrick in his final report (No 22 [23] page 33)[1] proposes the permanent establishment of a squadron of steam vessels, consisting of one war steamer of suitable size for the Commanding officer with his Head Quarters at Portland or Eastport, visiting occasionally the Fishing grounds, & 3 smaller steam vessels of light armament & draught of water with speed & power, to be stationed every summer on our coasts, which certainly renders it desirable that the preparation on our part should be maintained by the employment of a class of vessels of a number & description which would afford security to the interests of H.M. subjects & dominions in N.

[1] The reference is to House Executive Document No. 21, 33d Congress, 1st session (serial 717).

[2] Chaleur Bay and Miramichi Bay are on the east coast of New Brunswick; George Bay is to the west of Cape Breton Island and is connected by the Gut of Canso with the Atlantic Ocean.

[3] Northumberland Strait, which separates Prince Edward Island from the north shores of Nova Scotia and New Brunswick.

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America, & to the extent which the demands of the Public service in other quarters will admit.

The conversation with Clarendon reported in the quoted despatch of Buchanan of April 14 is of particular interest as showing that by April 11 the attitude of the British Government was less fixed than it had been. "Two days later Clarendon suggested to Elgin . . . that he should undertake the negotiation at Washington" (Masters, *op. cit.*, 48, with a significant quotation from Elgin's letter to the Lieutenant Governor of Nova Scotia dated April 14, 1854).

In the general instructions to Lord Elgin [1] of May 4, 1854, which follow, he was given a free hand; he was not to be subject to the restrictions of the instruction to Crampton of February 2, 1854 (printed above); it was set forth that the United States had refused to make the required concession on four of the five points put forward by the British Government; but in respect of only one of these was a policy suggested, namely, the foregoing of the Florida fishery in return for withdrawal of pretensions to the Pacific fishery on the British northwest coast (F.O. 5 : 589, No. 1):

Your Lordship being about forthwith to resume Your duties as Governor General of Her Majesty's Provinces in North America, Her Majesty's Government conceive that it might be highly beneficial to the public service that you should, on your way to the seat of your Government pay a visit to Washington, where you may have an opportunity of conferring with the Government of the United States on matters in which the interests of the British Provinces are very materially concerned.

Your Lordship is fully informed of the cause of the discussions between Her Majesty's Government and that of the United States on the subject of the Fisheries and Trade in which the British Provinces and the United States are more immediately interested; but for your greater convenience I furnish you confidentially with a printed collection [2] of correspondence on this matter which however you will eventually return to this Office.

In this Collection you will find a despatch [3] which I addressed to Her Majesty's Minister at Washington on the 2d of Febr last, explaining the reasons which induced Her Majesty's Government to consider it expedient to suspend for a time the negotiation on these matters which he had been authorized to carry on with the Government of the United States; but it is possible that the communications which you may have with the President and Mr Marcy during your stay in Washington may give you an opportunity of ascertaining whether there is any likelihood at the present time of the negotiations, if resumed, being brought to a successful conclusion. And in order that you may be able to take advantage of any favourable opening for that purpose, Her Majesty has granted you a Full Power herewith inclosed under the Great Seal authorizing you to negotiate and conclude on Her Majesty's behalf any Treaty with the United States.

It is very desirable that before you reach Washington, you should ascertain how far the legislatures of the several British Provinces would be willing, by moderating their extreme demands, to smooth away the difficulties which have hitherto proved a bar to the conclusion of any Treaty. It is clear that if the Provinces on the one hand and the United States on the other refuse to abate any portion of

[1] Earl of Elgin and Kincardine, styled in the preamble of the treaty "Governor General in and over all Her Britannic Majesty's Provinces on the Continent of North America, and in and over the Island of Prince Edward".

[2] Entitled, according to a marginal note, Correspondence Respecting the British North American Fisheries, and the Commercial Convention with the United States. Printed Confidentially.

[3] Quoted above.

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their pretensions, it is useless for Her Majesty's Government to negotiate any further; but in such an extreme case and more particularly if it originated in the pertinacious adherence of the Provinces to their demands Her Majesty's Government might, however reluctantly, be compelled to look rather to Imperial than to Colonial interests alone, and as in the case of Newfoundland, referred to in the letter[1] to the Colonial Office of which I inclose a Copy, be driven to consider whether it were right to sacrifice the former for the latter.

Your Lordship will find in the correspondence which I have inclosed full particulars as to the extent of compromise to which Great Britain has declared herself prepared to go, and the points which the Government of the United States has hitherto been indisposed to concede. In fact that Government has, in the course of the negotiations, rather raised than abated its pretensions; and this consideration has not been without its weight in deciding Her Majesty's Government to suspend the formal prosecution of those negotiations, lest by appearing over anxious for a settlement of the points in discussion they should encourage the Government of the United States still more to enhance their demands.

The United States are anxious to participate in the Fisheries in the Bays and on the shores of the British Provinces; and Great Britain on behalf of the Provinces is not indisposed to concede that privilege. The point on which the two Powers disagree is the sacrifice which the United States shall make to obtain this privilege.

Great Britain, in return for the admission of the United States to participate in the in-shore fisheries of the British Provinces, with the exception of the Salmon Fisheries, has required,[2]

1st The remission of the duty levied in the United States on British-caught Fish when imported into those States:

2dly The abolition of the Bounty now payable in the United States on American-caught fish:

3dly The Admission of the British Fishermen from the Provinces to fish within Three Miles of the Atlantic and Pacific Coasts of the United States:

4th The admission of British-built Vessels, including those built in the British Colonies, to Registry in the United States when owned by Citizens of the United States; in the same manner as that privilege has been granted by Great Britain to Vessels built in the United States

5th That certain Articles produced in the British Colonies, and specifically Coal and Iron, shall be admitted duty free into the United States, in conformity with the principle on which the question of duties in general was to be arranged, namely that such Articles as were produced equally in the British Provinces and in the United States might pass reciprocally without question or interference from one side of the Border to the other.

The Government of the United States, on their side, decline to abolish the Bounty on American-caught fish: to admit the British Fishermen to fish generally on the American Coast; to admit British Built vessels to Registry; and to allow Coal and Iron to be retained in the List of Articles which shall be admitted duty-free into the United States. On four therefore out of the Five points put forward by the British Government in behalf of its provinces, the United States have hitherto refused to make the required concession: and not only this, but they have put forward a claim to be admitted to participate in the British Fisheries on the North-West Coast of America,—on the plea that the British Concession should be applicable to all the shores of the British dominions, inasmuch as access to the United States fisheries on the Pacific is required by Great Birtain, notwithstanding they themselves refuse to admit the British fishermen to fish on the Coast of Florida. The American Government has in fact advanced the pretension to exclude British Fishermen from Fishing in Rivers and Estuaries South of Massachusetts, while applying for the admission of United States fishermen to the whole of the British Fisheries without exception.[3]

Unless these conflicting pretensions and requirements be reconciled, the conclusion of any agreement between the two Countries is out of the question; and the

[1] Dated June 26, 1853.

[2] There is a penciled marginal reference here to the Board of Trade letter of April 20, 1853.

[3] This sentence is stricken out in the source.

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point to which Her Majesty's Government wish to direct Your Lordship's attention is the possibility of reconciling them.

The influence and authority which you so justly possess in the British Provinces may afford you means for inducing the Colonial Governments to modify their extreme demands. On the other hand there are considerations arising out of the existing state of affairs in Europe which may operate with the Government of the United States and induce it to desire to be well with England at the present time if not from sympathy with the cause for which England and France are now arrayed in arms against Russia, at all events from the great material advantages which a commercial nation like the United States must derive from the unexampled liberality of the principles in regard to neutrals on which those two Powers have announced their intention of acting during the present war.

It is not however desirable that your Lordship should appear at Washington in the character of an Envoy from Her Majesty specially appointed to settle these troublesome questions. The mere suspicion of such a purpose would of itself suffice to render the Government of the United States still more inaccessible than heretofore to reason on the subject, in as much as it would conclude, however erroneously that the British Government was prepared to make sacrifices for the sake of averting a discussion with the United States while engaged in an arduous warfare with an European Power.

Your Lordship however will very properly take advantage of any information which you may acquire before you reach Washington of the disposition of the Colonial Legislatures to moderate their demands, to ascertain from the Government of the United States whether it would be prepared to act in this respect in a spirit of reciprocity. If the Colonial Governments should be willing, for the sake of facilitating a settlement of the question respecting the Fisheries which is fraught with so much danger to the maintenance of a good understanding between Great Britain and the United States, to modify their demands on any of the specific points to which I have alluded and in which Colonial interests are mainly involved, Her Majesty's Government would have no objection to give effect to such an improved disposition on the part of the local Legislatures; and it would then remain for Your Lordship to ascertain how far the Government of the United States would be prepared to act in a corresponding spirit. If it should be so disposed, Your Lordship will state to that Government that you are prepared at once to conclude an arrangement on the basis of mutual concession. If, on the other hand, the Government of the United States should be unwilling to accede to terms in themselves fair and such as it would comport with the honour of the British Crown to admit, Your Lordship will hold out no expectation of the British Government acquiescing in any such one-sided settlement.

Your Lordship will be at liberty to adopt any course which you may think expedient or safe in order to discountenance any unreasonable pretensions on the part of the Colonial Governments, but Her Majesty's Government would, except in a very extreme case be unwilling that any thing like even moral coercion should be resorted to with that view. Your Lordship will also steadily keep in mind, as a principle never to be lost sight of in negotiating with the United States, that no concession can safely be made to that Government except in return for corresponding concession on its part: that any concession on which it may insist must be purchased by concession on its side; and that so far from being likely to arrive at a permanent and satisfactory settlement by the adoption of a yielding tone the result in all probability would be the reverse. I do not mean to say that Your Lordship should in all case require concessions exactly equivalent in value; Her Majesty's Government would for instance be content to forego the Fishery on the Coast of Florida, which the Americans decline to yield, in return for the withdrawal by the United States of the pretensions which they have advanced to the Fisheries on the Coasts of the British Territories on the North West side of the Continent. But in either case the abandonment must be made on principles of mutual convenience without any further specification of the grounds which regulate that convenience. Her Majesty's Government could not admit as a valid ground the objection founded on the Slave-character of the State of Florida; neither might the Government of the United States be disposed to admit the validity of an objection founded on the charter given by the British Crown to the Hudson's Bay Company.

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Her Majesty's Government are certainly desirous of settling the question of Fisheries and Reciprocity of Trade on a permanent footing; but if that should not be possible, they would not object to a temporary arrangement being effected, based on the principles to which I have adverted, which would obviate the risk of collision on the Coasts between the National forces of Great Britain and the United States or between their respective Fishermen. Nevertheless, even with a view to the conclusion of a temporary arrangement, the experience which has been derived from the transactions of the last two years of the advantage of acting with firmness no less than with moderation in the treatment of the question, must not be lost sight of.

Her Majesty's Government place the utmost reliance in your Lordship's judgment and discretion, and they will not fetter you in the exercise of them by laying down any precise instructions to which you must adhere. You may choose your own time for opening the subject with the Government of the United States, and may be guided by the circumstances of the moment as to the degree of urgency which you should employ. It is scarcely indeed to be supposed that under the most favourable circumstances you could finally conclude an arrangement at Washington within the limited time to which in the first instance your stay there must necessarily be restricted; and therefore if you should consider it advisable to confine yourself on the present occasion to treating the subject with the United States Government in general terms, and to ascertaining how far and on what principles that Government may be disposed at a future period to enter with you more deeply into the question with the view of then arriving at a definite conclusion, you are at perfect liberty to do so, and to intimate that when the pressing calls on your attention elsewhere shall admit of your returning to Washington, you will be ready to resume the question and do your best to meet any disposition on the part of the Government of the United States to settle it on fair terms of reciprocity.

Her Majesty's Government are prepared to leave the matter for the present entirely in Your Lordship's hands, and they will therefore not release Mr Crampton from the restrictions imposed upon him by my despatch No 19 of the 2d of Febr.[1] But Her Majesty's Government, entertaining the highest opinion of Mr Crampton's judgment and ability, cannot too distinctly recommend Your Lordship to communicate unreservedly and with the most entire confidence with that gentleman; and I can give Your Lordship no better proof of the estimation in which Her Majesty's Government hold Mr Crampton than by stating to you that he will be furnished confidentially with a copy of this instruction, at the same time that he will be directed to afford Your Lordship all the assistance in his power for the accomplishment of the object which Her Majesty's Government have in view.

The position which Your Lordship occupies in the British Provinces is calculated to give more than ordinary weight to any arguments which you may use for the purpose of influencing either the Colonial Legislatures or the Government of the United States. The former will see in Your Lordship an advocate whose able and impartial administration of their general affairs entitles him to the most unreserved confidence and respect, the latter will conclude that your insistance on any specific points is based on considerations which you are well aware cannot be overlooked; and both may hope to obtain by your intervention not only a fair and honourable settlement of the matters in discussion between them, but an opportunity of developing the vast natural resources which they possess within their respective boundaries, and of laying the foundation of solid and permanent good will on either side of the border by which their territories are separated from each other.

With regard to Newfoundland there was this separate instruction of the same date (F.O. 5 : 589, No. 5):

With reference to the wish which would seem to be now entertained in Newfoundland to be included in the stipulations of any Treaty which may be entered into with the United States for the settlement of the Fishery and Trade Ques-

[1] Printed above.

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tions, I have to state to your Lordship, that considering that certain special privileges of fishing in the neighbourhood of Newfoundland are enjoyed by France, it will be necessary to insert in an Article by which greater rights of Fishing on the Coast of Newfoundland than they now enjoy should be conceded to the United States, words to this effect, "Saving and excepting the rights of France on the Coasts of Newfoundland."

The difficulty foreseen at London in inclusion of Newfoundland in the proposed treaty was the subject of these two later instructions, dated May 19, 1854, one of length and one very brief; they were received by Elgin at Washington almost at the close of his negotiation, seemingly on June 3; and he therefore found it necessary to assume some independent responsibility in agreeing to Article 6 of the treaty as written (F.O. 5 : 589, Nos. 6 and 7):

[*Instruction No. 6*]

I thought it advisable on Your Lordship's departure for Washington to give you in a few words a general caution against entering into any arrangement with the United States for including Newfoundland in the Fishery and Trade Convention which you are authorized to negotiate which might clash with the special privileges of fishing in the neighbourhood of that Island now enjoyed by France. It is desirable however that Your Lordship should be more fully informed of the complicated position of affairs as regards Newfoundland and of the various embarrassments which may attend any attempt to include that Island in the proposed Treaty with the United States.

The first of those difficulties unquestionably is the right which France possesses to fisheries on the Coast of that Island, which whatever may be the literal meaning of the terms in which it is conveyed is practically an exclusive right as against British enterprize.[1] For although the Treaty of 1783 and the Declaration of that year do not expressly convey any exclusive right to France, yet they do secure French fishermen from being interrupted in any manner by English competition; and it appears that the English Fishermen cannot carry on the Cod fishery within the limits specified in the Treaty without interrupting the French Fishermen. Consequently the French right, though nominally concurrent, is as far as the Cod fishery is concerned, practically exclusive.

But though such may be considered the bearing of the Treaty as regards British fishing, the Treaty has not been considered as precluding the British Government from granting without limitation to the United States a right of fishing on certain parts of the Coast of Newfoundland, from which as I have said above British fishermen are as far at least as the Cod fishery is concerned, virtually excluded; and the Treaty of 1818 by which that right was granted to the United States, conveyed to those States rights of fishing in other quarters which though much coveted by, have never yet been formally conceded to, France. I mean the Fisheries to and through the Straits of Belleisle and on the Coasts of Labrador.

Your Lordship is doubtless aware that in consequence of the uncertainty of the precise meaning and effect of a portion of the British Treaty with France, and the inconveniences resulting from it, as regards Great Britain, and of the impediments offered to the successful prosecution of the general Newfoundland fishery by the difficulty of procuring Bait, as regards France, negotiations have been for a long time in progress between the two Countries with a view to the improvement of the existing state of things, and to the removal of causes of difference and dispute between the respective Governments. I need not trouble Your Lordship with details upon this point, but it is obvious that much embarrassment might arise, and the conclusion of an amicable arrangement with France be materially im-

[1] See the learned discussion of "French Fishing Rights in Newfoundland", by James Brown Scott, in the introduction to Argument of the Honorable Elihu Root, xiii–xxvii, with relevant documents from the Treaty of Utrecht of 1713 to the convention of April 8, 1904, including the Treaty of Versailles of September 3, 1783, and accompanying declarations (*ibid.*, appendix, 375–78, 390–94, 464–66).

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peded, if the result of your negotiation with the United States should involve a still further concession of rights of fishing on the Coast of Newfoundland from which British fishermen are now practically excluded, and thereby give occasion to remonstrances on the part of France against the admission of the United States to share in a fishery which is now enjoyed, without British competition, by France. For this reason, it is thought necessary that the rights of France should in terms at least be reserved in any Treaty which Your Lordship may conclude with the United States.

But there is an additional difficulty opposed to the unrestricted admission of the United States to the Fisheries on the coasts of Newfoundland; for that privilege would give the American Fishermen additional facilities for supplying those of France with Bait caught in the adjoining waters, and the equivalent which the British Government would have to offer to the French Government for any concessions which a consideration of British interests might prompt it to demand in return for facilities to be afforded to French fishermen in procuring means for the successful prosecution of their occupation, would thereby lose much of its value.

If there were any good grounds for anticipating that the United States might be induced to consent not only to the rights of France under existing Treaties being reserved, but also to the rights which might be conferred upon France by any future Treaty being dealt with in the same manner, Her Majesty's Government, would not be disinclined to make a proposal to that effect; but as they cannot suppose that the United States would easily be brought to listen to such a proposal; I am not prepared to instruct Your Lordship to bring it forward.

Thus far as regards the difficulties presented by our present and prospective arrangements with France in the way of any Treaty with the United States which should apply to the Island of Newfoundland equally as to the rest of the British Colonies.

As regards the position and interests of Newfoundland the question is not less beset with difficulties.

Your Lordship is aware that it is only recently that the Legislature of that Island have evinced a disposition to be included in any general arrangement with the United States: but their willingness to be so is clogged with reserves which rest on considerations of vital importance as regards the interests of the Island, but which seem to preclude the expectation that Newfoundland can be included in the Convention under consideration.

The object of that Convention is twofold,—to provide for a joint prosecution of fisheries on the coasts of the British Provinces and of the United States respectively, and for the sale of the produce of those fisheries in the respective Countries; and also for a free and mutual exchange of certain of the products of the British and American Soil; and these two objects are indissoluble. For it is only in consideration of the advantage that would be derived by the British Provinces from the unrestricted interchange of certain Articles of Produce with the United States, that Her Majesty's Government could consent to the admission of the United States to participate in the British Fisheries for which the United States have no equivalent concession as regards Fishery to offer in return.

But it appears that it would be ruinous for Newfoundland to be included in a Convention founded on this basis, which would at once deprive the Island of one third of its limited revenue; and it is therefore suggested that although as regards the other British Provinces and the United States absolute freedom of trade might be stipulated in the Convention, an exception should be admitted as regards the trade between Newfoundland and the United States, so that on certain specified Articles duty to a moderate amount might be levied for the benefit of the Colonial Treasury. But such a departure from the basis of the Convention, if sanctioned, might probably be urged with equal force by other Colonial Legislatures in regard to certain other Articles whose introduction into any of the British Provinces for competition with the Produce of the British Soil, it might seem desirable to impede; and if such a principle were to be sanctioned in one instance it would be difficult, if not impossible, to deny its applicability to another; and the result would probably be that the Convention, if concluded with such exceptions, would only serve to complicate, instead of simplifying, the commercial intercourse between the British Provinces and the United States in the first place, and between the British Provinces themselves in the next.

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Moreover it is scarcely to be expected that the Government of the United States would assent to such a reserve in favour of duties on particular Articles as the legislature of Newfoundland desire to make. The United States would certainly not do so without a corresponding reserve in their favour: and in what could that reserve consist? The products of the soil of Newfoundland which enter into the Export Trade are few, and of no great value; and it is not pretended that the imposition of a duty on the admission of such of them as might be sent to the markets of the United States would tempt those States to concur in the imposition of a duty in Newfoundland on the products of the soil of the United States. The Article of Fish, while it would form almost the sole object of the Export trade of Newfoundland to the United States, would be the only one on which the imposition of a duty would compensate the United States for any duties which the Treaty might allow to be levied in Newfoundland on the produce of those States; and, whatever might be the truth of the case, it cannot be supposed that the United States would concur in a proposition that the extended right of fishery to be conceded to the United States on the Coasts of Newfoundland ought in fairness to be purchased by the free admission of the Produce of the British Colonial Fishery to the markets of the United States.

The obstacles to the association of Newfoundland in the proposed Treaty with the United States seem therefore to be very great: on the one hand the embarrassment of the Colony by the diminution of its revenue if it comes into the Treaty on the same terms and principles as the other British Possessions;—on the other, the certainty that the United States would not agree, as indeed they could not be expected to agree, to admit of exceptions in favour of Newfoundland wholly inconsistent with the principles on which the negotiations are carried on, and for which Newfoundland has not the means of offering or the inclination to offer any corresponding equivalent.

Under these circumstances it is a matter of no small perplexity to determine what course should be pursued. The Legislature of Newfoundland express a desire to be included in the general Convention, and might feel aggrieved if the Island were not brought within its provisions; on the other hand, the United States profess to entertain the same desire, and might find in the refusal, on whatever grounds, to admit their fishermen to extended privileges on the Coast of Newfoundland, a pretext either for breaking off the negotiations altogether, or for insisting with unflinching pertinacity on concessions in other quarters which might not be acceptable to others of the British Provinces.

Your Lordship will have seen in the several Drafts of Treaty which have been under discussion with a view of settling with the United States the various questions arising out of the Colonial Fisheries and Trade, that it has been constantly and indeed necessarily provided that the execution of any Treaty to be concluded must depend on the assent of the Colonial Legislatures and of the Senate of the United States to the stipulations which might be agreed upon by the Plenipotentiaries on either side; but as regards the assent of the British Colonial Legislatures, it has always been assumed that such assent would be concurrently given by all, or if not that the Treaty would altogether fall to the ground. The reason is obvious: the British Crown could only negotiate such a Treaty, or the United States concur in it, by dealing with the British Provinces as constituting for the purposes of the Treaty, a single body, otherwise, the intercourse between the Provinces and the United States would have to be carried on under different systems, and the United States might require security that a dissenting Province should not by means of intercolonial communication be practically admitted to the benefits, though exempted from the burthens of the Treaty. If it were not for this obvious principle, Your Lordship might without much risk of inconvenience proceed to negotiate with the United States for Newfoundland in common with the other British Provinces, on the understanding that although by refusing to assent to the terms finally agreed upon, Newfoundland would exclude itself from the benefits of the Treaty, the Treaty would still hold good as regards the other Provinces. But for the reasons which I have stated such an expedient is out of the question;[1] and as the Legislature of Newfoundland might under existing circumstances, withhold its assent from any Treaty which would place the Trade of the Island with the United States on the same footing of reciprocity as it is pro-

[1] This is the expedient of Article 6 of the treaty.

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posed to place the Trade between those States and the other British Provinces, it is impossible to make the settlement of the embarrassing questions in regard to Colonial intercourse which the British Government and that of the United States are equally desirous of effecting, dependent on the contingency of the assent of the Island Legislature which there is every reason to suppose would be withheld.

It would seem then that if the Legislature of Newfoundland and the United States are prepared to make arrangements for the extended admission of American Fishermen to the fisheries on the Coasts of Newfoundland, the adjustment of the terms in which those arrangements should be effected, can only safely be attempted by a separate Treaty between Great Britain and the United States having reference to Newfoundland alone. Such an arrangement Your Lordship may feel yourself at liberty to propose to the Government of the United States, if in your discussions with that Government while at Washington, you should find it disposed to treat on the questions of Fisheries and Trade as already put before it, and desirous of embracing Newfoundland within the provisions of any Treaty by which those questions should be arranged.

Under any circumstances it is desirable that Your Lordship should, even without waiting to ascertain whether the Government of the United States is prepared to assent to an exceptional arrangement as regards Newfoundland, at once communicate with the Governor of that Island, and state the views of Her Majesty's Government as set forth in this despatch; and Your Lordship will request the Governor to inform you without loss of time of what sacrifices of Revenue the legislature of the Island may be disposed to make for the purpose of facilitating your negotiation on its behalf.

[*Instruction No. 7*]

With reference to my despatch N° 6 of this days date, I have to state to Your Lordship that in the event of its proving to be impossible to include Newfoundland in any General Treaty with the United States, an Article might perhaps be inserted in such General Treaty providing that the questions respecting Newfoundland were reserved for a separate negotiation.

Elgin arrived at New York on Friday, May 19, in the Cunarder *Europa*, which had left Liverpool on May 6 (New York Herald, May 20, 1854, p. 1); he reached Washington in the evening of May 22 (*ibid.*, May 23, 1854, p. 1); two weeks later the treaty was signed, on Monday, June 5, 1854;[1] and Elgin left Washington by "the first train" thereafter (Morison, *op. cit.*, 184).

The technical status of the negotiation upon the arrival of Elgin was that the proposal of Marcy made by his draft and note of September 1, 1853, had not been formally answered; objections thereto on the part of the British Government had been communicated verbally both at London and at Washington; that Government had suggested (quoted instruction of February 2, 1854) the suspension "for a while" of the negotiations. The chief differences (other than clauses of form and matters of wording) between the draft of Marcy and the final text of the treaty have been previously listed.

Elgin had but a brief time available for his visit to Washington; his meetings with Marcy were so constant that the latter sent no despatch to Buchanan at London by the steamer of June 7; a letter to Buchanan of the date of the treaty includes this paragraph (50 Marcy Papers, 44090–91, June 5, 1854):

[1] At about midnight, according to Oliphant, Episodes in a Life of Adventure, 54–55.

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I suppose you will be disappointed at not receiving a despatch by the steamer which leaves Boston on the day after tomorrow but I have been for the last ten days constantly engaged with Ld Elgin on the Fishery & Reciprocity treaty—we have this morn^g^ settled the last points of difference in regard to its provisions. It will be signed this evening & I believe it is in a shape to be acceptable to this country. I will soon send you a copy of it.

On Elgin's refusal to have "a meeting of delegates from the provinces" and his obtaining "from the U.S. Government the best terms I could get", see his letter to Clarendon of August 25, 1855, quoted in Morison, *op. cit.*, 181–86, at page 183.

Except for one note of Marcy and some drafts of articles and clauses, the discussions between Marcy and Elgin are not of record in the archives of the Department of State. The note of Marcy, of Sunday, June 4 (D.S., 7 Notes to the British Legation, 427–28), relates to the final paragraph of Article 4 (see the last paragraph of Article 5 of Marcy's draft):

In agreeing to give up the free navigation of the St. John's I did not intend to be understood as consenting to omit the clause exempting lumber cut in Maine and floated down that river from duty, when brought into the United States.

The enclosed is the modification of that part of Article 5th in my projet relative to the St. John's which makes it conformable to my views of the subject.

Such a clause seems to me to be just and right. It is due to the lumber interest and will break or weaken the force of opposition to the Treaty from that quarter.

In the treaty file is a draft comprising a preamble and six articles; it is marked in pencil (above Article 1) "Brt projet Reciprocity Treaty"; the content shows that this paper must have been under discussion between the writing of Marcy's quoted note of Sunday, June 4, and the night of June 5, when the treaty was signed; the preamble of the draft is of the same wording as the final text down to the naming of the Plenipotentiaries, with an incomplete continuation in pencil; Articles 1 to 5 inclusive are as phrased in the treaty, but do not have the last four paragraphs of the first article; and the final article, in the margin of which is written in pencil "not to be Copied", reads thus:

ARTICLE VI

The High Contracting Parties hereby agree to enter into negotiations without delay with the view of extending to the Island of Newfoundland the Provisions of this Treaty in so far as they may be applicable to that Colony.

In D.S., Reciprocity Negotiations, 1848–1854, are three other relevant papers: (1) a pen-written draft, with penciled interlineations, of the wording of paragraphs 3, 5, and 6 and the first four words of paragraph 4 of Article 1 of the final text; (2) a pen-written draft of the last paragraph of Article 4 of the final text, with the heading "Article 5, in the *Projet* as proposed to be modified"; and (3) a penciled draft of the wording of Article 6 of the final text, with the heading "(Substitute of (Last article)".

From Quebec on June 12 Elgin sent the treaty to Clarendon with this despatch (received at the Foreign Office on June 26), wherein he reviews the terms agreed upon, without, however, referring to the

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question of the American bounty for the cod fishery, which was one of the five points in his general instructions [1] of May 4 (F.O. 5 : 589):

I send herewith by Special Messenger to New York, a treaty executed on Monday the 5th of June by Mr Secretary Marcy, on behalf of the Government of the United States and by myself on behalf of that of Great Britain, on the subject of the Fisheries and Reciprocity of Trade between the United States and the British Provinces in North America.

I adopt this course because I find on my arrival here, that the usual weekly mail for England has already been despatched, and because I am unwilling that any delay should take place in the transmission of this important document.

2. In coming to an understanding with the Government of the United States on the Provisions of this Treaty, the main obstacle which presented itself was the case of Newfoundland. I received Your Lordship's final instructions on this point contained in your despatches No 6 & 7 of May 19th marked Secret,[2] only two days before the period beyond which it was impossible that my visit to Washington should be protracted. Those instructions, as Your Lordship is aware, suggested difficulties which stood in the way of the inclusion of Newfoundland in this Treaty, very much more serious than those which were anticipated at the time when Your Lordship's Despatch No 5 of 4th May[2] was addressed to me. I proposed to Mr Marcy in the first instance as the simplest mode of dealing with the question, that Newfoundland should be altogether omitted from the present Treaty, and a clause inserted, pledging the British and United States Governments to make it the subject of a separate arrangement. Mr Marcy, who I am bound to say evinced in all his communications with me great candor and fairness, expressed much unwillingness to adopt this course, feeling apprehensive, as he alleged, that it might lead to embarrassing discussions in the Senate. The same objection applied with even greater force to the insertion of a clause in the Treaty reserving (as suggested in Your Lordship's Despatch Secret No 6 of May 19th) not only "the rights of France under existing Treaties"—but also, "the rights which might be conferred on France by any future Treaty". After much consideration, we agreed on the clause which now stands No 6 in the Treaty. By the terms of this clause, the Provisions of the Treaty are extended to Newfoundland in "so far as they are applicable to that colony" and it is further agreed that if either, the Imperial Parliament, the Provincial Parliament, or Congress, should fail to include Newfoundland in any legislation which may be necessary for giving effect to this Treaty, such omission shall not prevent the Treaty from taking effect as regards the other Colonies. The terms of the Treaty itself therefore distinctly imply that in some respects it is not applicable to Newfoundland, and they further point out a mode by which that Colony may be excluded from its operation. I have been most desirous, as I trust Your Lordship will believe, to avoid doing any thing at Washington which could prejudice the endeavours of Her Majesty's Government, to effect an amicable arrangement with France in reference to the rights of that Country in the Fisheries of Newfoundland. At the same time I felt, and in this opinion Mr Crampton fully concurred, that so favorable an opportunity for settling important questions, which had been long pending between Great Britain and the United States, might not again present itself, and that I ought not to shrink from assuming any responsibility which the faithful discharge of the duty which Your Lordship had imposed upon me, might entail.

3. Passing from this special, though embarrassing case, the general scope of the Treaty may be briefly described, as providing for the admissions duty free, into one of the greatest, and certainly the most rapidly rising, market of the World, of all the more important staple products of the British North American Colonies, among which are included, Coal, Timber, Fish, Grain and Flour. In return for this advantage, the people of the United States, obtain certain rights of fishing and navigation, which they value highly, but the enjoyment of which by them will, it may be confidently predicted, be attended with benefit rather than loss to the Colonists, as leading to the more rapid improvement of resources hitherto but imperfectly developed.

[1] But the question was not mentioned in the instruction to Crampton of February 2, 1854.

[2] Printed above

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4. In the original drafts of this Treaty the fisheries and estuaries were reserved for the fishermen of either nation respectively, and in subsequent drafts, in order to avoid disputes, to which the Ambiguity of the word "Estuary" might give rise, it was provided that the Estuaries & Rivers to be excepted from its operation, should be enumerated. I found however on enquiry that this Enumeration would occasion great delay, and that it was even doubtful whether the Treaty could be submitted to the Senate before it was complete in this particular. I agreed therefore with Mr Secretary Marcy to substitute the words which Your Lordship will find in the 2 Paragraph of Articles I & II for the terms used in earlier drafts, and to add an arbitration clause which will I trust furnish the means of amicably adjusting any differences which may arise with respect to the extent of the reservation in question.

5. In order to get rid of all difficulty in regard to interference with the chartered rights of the Hudson's Bay Company, and also with respect to privileges of fishing on the Coast of Florida, the fisheries on the Pacific Coast have been altogether omitted from this Treaty, and the liberty of fishing conceded to the Subjects of Her Majesty on the Eastern Coast of the United States, has been bounded by a Geographical line.

6. I was unable to induce Mr Marcy to consent to the introduction of a clause conceding to Colonial built Vessels, registration in the United States when owned by Citizens of that Country. It is very obvious, however, that if, in Consequence of the refusal of this boon, the cost of carriage in Colonial vessels is rendered permanently lower than in Vessels of the United States, the evil must soon correct itself, under a system which admits the bulky staples of the Colonies duty free into the American Market. Mr Marcy on his side agreed to withdraw the claims which he had formerly preferred on behalf of the Citizens of the United States to the free navigation of the River St John.

7. Article 4 of the Treaty is further modified in the following particulars—Firstly—that the suspension of the reciprocity Article III which is to follow if the British Government should at any time exercise the reserved right of closing the St Lawrence against United States Vessels, shall take effect only in so far as Canada is affected thereby—and Secondly—that the Navigation of Lake Michigan is secured to British Vessels, and a pledge given that the Government of the United States will urge the State Governments to grant them similar privileges on the State Canals.

8. By the last Article of the Treaty it is provided that the ratifications shall be exchanged at Washington within Six Months after the date thereof. Your Lordship will of course determine the time and mode of carrying this stipulation into effect. I presume that the formal act may be performed by Mr Crampton, but I need not say that I am at Your Lordship's disposal at any Moment if I am required for the Service.

9. So soon as the Treaty shall have passed the Senate, I shall endeavor to obtain in Canada the legislation necessary for giving effect to it, and I shall put myself at once into communication with the Governors of the other Provinces with the view of determining what steps it may be expedient to take in order to accomplish the same object there.

10. As no particular time is specified within which Newfoundland must avail itself of the benefits of the Treaty or forfeit them altogether, it is of course not necessary that the Imperial Legislation requisite for giving effect to it, as respects the other Provinces, should be deferred until the Settlement of the questions specially affecting that Colony.

11. It will be for Your Lordship to consider what directions it may be advisable under existing Circumstances to give to the Admiral on the North American Station, in reference to the protection of the Fisheries during the ensuing Season. It is most important that occasions of collision should be, if possible, avoided in the present state of affairs, and my exertions to bring this Treaty into shape at the earliest moment have been prompted mainly by a desire to accomplish this end. The fact that an arrangement has been concluded by the negociators acting on behalf of the respective Governments will probably be held to justify Her Majesty's Government in issuing such instructions as may obviate all risk of collision for the present season.

12. Your Lordship will I hope pardon the imperfections of this despatch which is written in the midst of much business and turmoil, as I arrived here yesterday,

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and the Provincial Parliament meets to-morrow; but I should be guilty of an unpardonable omission if I were to fail to acknowledge the hearty and valuable assistance which I received from Mr Crampton in the discharge of the duty assigned to me by Your Lordship.

13. I will now close by saying that it is my deliberate opinion, founded on a knowledge of the condition of these Colonies, derived from long residence in this quarter, that the favorable results of this Treaty, should it come into operation, on their prosperity and progress, will be found very far to exceed what its most sanguine supporters have ventured to anticipate.

The Activities of Andrews

On the activities of Israel De Wolf Andrews, see Morison, *op. cit.*, 177–86; Tansill, *op. cit.*, 61–62, 66–75; Wriston, Executive Agents in American Foreign Relations, 745–47; Overman, "I. D. Andrews and Reciprocity in 1854", in Canadian Historical Review, XV, 248–63; Le Duc, "I. D. Andrews and the Reciprocity Treaty of 1854", in *ibid.*, 437–38; Masters, "A Further Word on I. D. Andrews", in *ibid.*, XVII, 159–67; Shippee, *op. cit.*, 72–77.

Besides four missions as Special Agent, Andrews had served as Consul at St. John, New Brunswick, a post to which he was first appointed on March 17, 1843; on March 3, 1855, he was appointed "Consul General to reside in the British North American Provinces", with office at Quebec.

Proceedings in the Senate

Under date of June 12 Marcy sent a copy of the treaty to Buchanan with this expression of his views (D.S., 16 Instructions, Great Britain, 295–300, excerpt):

> Before it can go into operation there must be as you will perceive, legislation, not only by Congress and the Imperial Parliament of Great Britian, but by the Provincial legislatures. The only serious opposition that I apprehend, will arise upon the insertion of *coal* on the *Free list.* I do not think that the coal interests in the States which are favored with the article will be much affected. Canada is as I understand, already a valuable customer and is becoming more and more so every year for the coal of Pennsylvania. The Cumberland Coal—that in which Maryland and Virginia feel considerable interest—finds a good market at Halifax. If the Cumberland coal now sustains a competition with the Nova Scotia Coal in that Province and New Brunswick, then Maryland and Virginia have nothing to fear, and probably something to gain by making coal a free article. The placing lumber on the Free list will be unacceptable to a part of Maine, but as in other respects the Treaty favors that State, I think it will not be opposed by her Senators and Members of Congress.

The treaty was received in the Senate on June 21 with the presidential message of the previous day and was reported from committee on July 11. A proposal to remove the injunction of secrecy, offered on July 12, was considered on July 15, adopted, reconsidered, and withdrawn. There was debate on July 21, July 24, August 1, and August 2; among the few amendments offered,[1] all of which were

[1] Marcy thought on July 23 that it was "not quite certain" that the treaty would be approved by the Senate and that "If lost it will be on a question as to the right of the genl govt to interfere with the fishery on the coasts of the States" (51 Marcy Papers, 44311–14, Marcy to John Y. Mason, July 23, 1854).

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rejected, there was only one touching the schedule of Article 3; this, which would have deleted coal, failed by 32 votes to 5. The resolution of advice and consent was passed on August 2, 1854, by 32 ayes to 11 nays (see Executive Journal, IX, 339, 349, 353, 357–58, 363, 366, 374–75, 376). Ratification by the United States and Great Britain followed respectively on August 9 and 17; ratifications were exchanged at Washington on September 9; and proclamation issued on September 11, 1854. The legislation which, under Article 5, was a condition precedent to the taking effect of the treaty, had not then been enacted, except in the United States.

Article 5

By Article 5 the treaty was to "take effect as soon as the laws required to carry it into operation shall have been passed" by Congress and by the Parliaments of Great Britain, Canada, Nova Scotia, New Brunswick, and Prince Edward Island.

While such legislative action was possible from signature of the treaty, the result in the Senate was naturally awaited. With this presidential message, dated the day (August 2) that the Senate resolution of advice and consent was adopted, a copy of the treaty was sent to the House of Representatives (Richardson, V, 247):

> I herewith transmit to you a copy of a treaty between the United States and Great Britain, negotiated at Washington on the 5th of June last. It has been concurred in by the Senate, and I have no doubt that the ratifications of it will be soon exchanged. It will be observed that by the provision of the fifth article the treaty does not go into operation until after legislation thereon by the respective parties.
>
> Should Congress at its present session pass the requisite law on the part of the United States to give effect to its stipulations, the fishing grounds on the coasts of the British North American Provinces, from which our fishermen have been heretofore excluded, may be opened to them during the present season, and apprehended collisions between them and British fishermen avoided.
>
> For this reason and for the purpose of securing to the citizens of the United States at the earliest practicable period other advantages which it is believed they will derive from this treaty, I recommend the passage by Congress at the present session of such a law as is necessary on the part of the United States to give effect to its provisions.

Enactment of the necessary statute before the end of the session then holding was a matter of some difficulty, since the intervening period was very brief (see the vivid, though not wholly accurate, account of the legislative proceedings given by Andrews to Elgin in Morison, *op. cit.*, 179–80). A resolution had been adopted on July 1, 1854, calling for adjournment *sine die* on Friday, August 4, at noon (Congressional Globe, 33d Congress, 1st session, pp. 1594–95); and it was not until the day so fixed that the hour of final adjournment was altered to 8 a.m. of Monday, August 7, with a proviso, however, that no motion other than one to adjourn should be taken up by either House after 4 p.m. of August 4 (*ibid.*, 2108–9, 2117, 2121, 2136, 2180, 2212); on that day each House rose before 4 p.m., and the sittings of Saturday, August 5, and of Monday, August 7, were for formal procedure only.

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Soon after the House met at 10 a.m. of Thursday, August 3, the presidential message of August 2 was received, and on motion of Thomas H. Bayly, of Virginia, the message and treaty were referred to the Committee on Foreign Affairs and ordered to be printed (House Journal, 33d Congress, 1st session, serial 709, p. 1274; Congressional Globe, same session, p. 2096); later on the same day Bayly reported from that committee a bill to carry the treaty into effect (H.R. 513), which was read a first and second time, referred to the Committee of the Whole House, and ordered printed (House Journal, 1289); the House sat until 5 a.m. of Friday, August 4, and just before it rose, Harry Hibbard, of New Hampshire, moved to reconsider the vote of reference to Committee of the Whole House and on his motion demanded the previous question; the vote on ordering the previous question was ayes 95, nays 6, sufficiently decisive, but no quorum (Globe, 2132; it was this attempt to take up the bill which Andrews says "failed by about 40 majority against it"); the House then recessed until 9 a.m. of Friday, August 4; soon after the expiration of that recess the vote of reference to Committee of the Whole House was reconsidered and, under the leadership of Bayly, all necessary parliamentary steps to and including final passage of the bill, followed; there was no record vote and no vote by tellers; only seven members supported a demand for the yeas and nays on final passage (House Journal, 1325–26; Globe, 2135); the bill then went to the Senate, where it was at once passed without debate or record vote (Senate Journal, 33d Congress, 1st session, serial 689, p. 682; Globe, 2212); and before the House rose at 3:15 p.m. of that day (Friday, August 4), the message from the Senate, announcing the action of that body, had been received.

Approval of the act is dated August 5, 1854; the first of its two sections reads (10 Statutes at Large, 587–88):

> That whenever the President of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain and the Provincial Parliaments of Canada, New Brunswick, Nova Scotia, and Prince Edward's Island, have passed laws on their part to give full effect to the provisions of the treaty between the United States and Great Britain, signed on the fifth of June last, he is hereby authorized to issue his proclamation, declaring that he has such evidence, and thereupon, from the date of such proclamation, the following articles, being the growth and produce of said provinces of Canada, New Brunswick, Nova Scotia, and Prince Edward's Island; to wit:
>
> [Here follow the items of the schedule of Article 3]
>
> Shall be introduced into the United States free of duty so long as the said treaty shall remain in force—subject, however, to be suspended in relation to the trade with Canada, on the condition mentioned in the fourth article of the said treaty; And all the other provisions of the said treaty shall go into effect, and be observed on the part of the United States.

At this time none of the four Provincial Parliaments referred to in the statute was in session, and the Parliament of Great Britain was about to be prorogued (on August 12); the acts of the Legislatures of Canada, Prince Edward Island, New Brunswick, and Nova Scotia for giving effect to the treaty were respectively of September 23,

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October 7, November 3, and December 13, 1854 (45 British and Foreign State Papers, 878–83); the act of the Parliament of Great Britain was of February 19, 1855 (18 Victoria, cap. 3; 45 British and Foreign State Papers, 609–10); and on March 16, 1855, the presidential proclamation under section 1 of the act of August 5, 1854, issued (10 Statutes at Large, 1179); this was the day after Crampton's note transmitting "copies of an act passed on the 19th ultimo by the Imperial Parliament of Great Britain, for carrying into effect the Treaty" (D.S., 32 Notes from the British Legation).

Proclamations of the British statute of February 19, 1855 (which incorporated the treaty), were issued by the Lieutenant Governor of New Brunswick on March 20, by the Lieutenant Governor of Nova Scotia on March 21, by the Governor General of Canada on March 22, and by the Lieutenant Governor of Prince Edward Island on March 29, 1855; for Nova Scotia there was a second proclamation, also of March 21, referring to the Nova Scotia act of December 13, 1854, and declaring the treaty in effect; the five proclamations were duly communicated to the Secretary of State (D.S., 32 Notes from the British Legation, March 30, April 2, and April 15, 1855, and enclosures).

Pending completion of the necessary legislation, steps had been taken to bring the treaty into operation as far as possible (see Masters, *op. cit.*, 98–100). News of the action of the Senate and of Congress was received at London on August 16; the British instrument of ratification of August 17 was sent to Washington by the mail of August 18; and at the same time, pursuant to the request of Marcy communicated through Buchanan, directions went forward "to the British Colonial and Naval Authorities not to molest American Fishermen in using at once the priveleges secured to them by the Treaty" (see D.S., 16 Instructions, Great Britain, 308, August 4, 1854; 66 Despatches, Great Britain, Nos. 40 and 41, August 18 and 25, 1854, and the note of Clarendon of August 19, 1854, enclosed with the latter). Copies of the communications to the Governor General of Canada, to the Lieutenant Governors of Nova Scotia, New Brunswick, and Prince Edward Island, and to the Governor of Newfoundland, and of a letter from the Admiralty with the instruction to Rear Admiral Arthur (later Sir Arthur) Fanshawe, are enclosures to the instruction from Clarendon to Crampton of August 18, 1854, which was to be made known to Marcy (F.O. 115:139, No. 188 and enclosures).

On August 19 Elgin wrote to Marcy from Quebec that he had given directions that "the River St Lawrence be thrown open to American Vessels during Her Majesty's pleasure in the manner provided for in that Treaty" (D.S., 31 Notes from the British Legation). On October 16 United States Treasury regulations were issued, permitting the entry of British-caught fish, fish products, etc., under conditional bond; and during November and December these regulations were extended so as to be applicable to all articles of the free list of the treaty imported from Canada, New Brunswick, and Nova Scotia, reciprocating measures taken in those Provinces, some of which were similarly conditional and some of which were unqualified,

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for the free entry of imports from the United States; but such regulations were not extended to Prince Edward Island because of the conditional wording of the act of the Legislature thereof (see D.S., 31 Notes from the British Legation and 7 Notes to the British Legation, October–December 1854, *passim*; also Miscellaneous Letters, November–December 1854, letters to the Secretary of State from James Guthrie, Secretary of the Treasury, November 11, November 28, and December 1, 1854; and the relevant paragraph in the annual message to Congress of December 4, 1854; Richardson, V, 277).

By section 1 of the act of March 2, 1855 (10 Statutes at Large, 632–33), the Secretary of the Treasury was authorized, upon the going into effect of the treaty, to refund duties collected and to cancel bonds given for duties on all imports from September 11, 1854 (the date of proclamation of the treaty), of "fish of all kinds, the products of fish, and of all other creatures living in the water" from New Brunswick, Canada, Nova Scotia, Newfoundland, or Prince Edward Island. By section 2 of that act like authority was given in respect of all articles of the treaty free list imported from Canada, New Brunswick, and Nova Scotia "since the date of the acts of their respective governments admitting like articles into said provinces from the United States free of duty", and from Prince Edward Island or Newfoundland "should it be proved, to the satisfaction of the said secretary, that Prince Edward's Island, or Newfoundland, have admitted all of the articles enumerated in said treaty from the United States, free of duty, prior to said treaty going into operation".

Article 6

By Article 6 the provisions of previous articles of the treaty were to "extend to the Island of Newfoundland, so far as they are applicable to that Colony", subject to legislation by the Imperial Parliament, the Parliament of Newfoundland, and Congress. Section 2 of the act of August 5, 1854 (10 Statutes at Large, 587–88), provided—

> That whenever the island of Newfoundland shall give its consent to the application of the stipulations and provisions of the said treaty to that Province, and the Legislature thereof and the Imperial Parliament shall pass the necessary laws for that purpose, the above enumerated articles shall be admitted free of duty from that Province into the United States, from and after the date of a proclamation by the President of the United States, declaring that he has satisfactory evidence that the said Province has consented, in a due and proper manner, to have the provisions of the treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained.

On July 22, 1855, Crampton wrote this note to Marcy (D.S., 32 Notes from the British Legation):

> I beg leave to acquaint you that the Legislature of Newfoundland have passed an Act[1] to give effect, on the part of that Colony, to the Treaty of Reciprocity concluded between Great Britain and the United States on the 5th of June 1854.
>
> I have the honor to inclose herewith a Copy of this act, which has been transmitted to me by the Governor of Newfoundland. His Excellency further informs

[1] Of July 7, 1855 (45 British and Foreign State Papers, 883–84).

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me that the same has been sent to England for the Queen's approval; and so soon as this shall have been obtained, His Excellency will issue the necessary Proclamation for fixing the time after which the Provisions of the Treaty shall extend to Newfoundland.

Under date of December 8, 1855, Crampton transmitted to Marcy a copy of the proclamation issued by the Governor of Newfoundland on November 14, 1855, "for bringing into operation the Imperial Act to carry into effect the Reciprocity Treaty between Great Britain and the United States" (*ibid.*).

The proclamation of President Pierce under section 2 of the act of August 5, 1854, was issued on December 12, 1855 (11 Statutes at Large, 790–91).

The Magdalen Islands

In the first paragraph of Article 1 are specifically mentioned the Magdalen (sometimes called Madelaine) Islands; these are situated in the Gulf of St. Lawrence about fifty miles to the north of Prince Edward Island. From 1763 the Magdalen Islands were under the Government of Newfoundland until by the Quebec Act of 1774 they were "during his Majesty's pleasure", annexed to Lower Canada (Quebec); in section 60 of the British North America Act of July 23, 1840 (cited above), the right was expressly reserved to the Crown to annex the Magdalen Islands to Prince Edward Island; but such action was not taken, and the Magdalen Islands have remained and now form part of the Province of Quebec.

Regarding the fisheries of the Magdalen Islands, see Sabine Report, 72–73, 249–50.

The Commission Under Article 1

For the proceedings of the Commission under Article 1, see, in Moore, International Arbitrations, I, 426–94, the chapter on "Reserved Fisheries under the Reciprocity Treaty of 1854".

Article 4, Paragraph 1

The right reserved to the British Government by paragraph 1 of Article 4 to suspend the privilege of navigating the St. Lawrence River and connecting canals was not exercised during the period when the treaty was in force.

Article 4, Paragraph 3

By one of the clauses of this paragraph the Government of the United States engaged "to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals on terms of equality with the inhabitants of the United States". On this point Marcy had written in his quoted note of September 1, 1853:

The reciprocal clause proposed [by Great Britain] in regard to the use of the Canals in the United States, which is, as I presume, only intended to extend to

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such as the United States own or can control would be nugatory; for they have no interest in or direction over, any canals whatever. These canals are generally State works: some, however, belong to incorporations. The United States have no right to interfere with either.[1] As income is the great object of those interested in these works, I cannot think there is any reason to apprehend that those who have the management of them will ever undertake to discriminate in regard to their use or on the rate of tolls between our citizens and other persons who may desire to avail themselves of these artificial channels of trade and travel. There would not be any objection to a stipulation engaging the Executive of the United States to apply to and urge upon, the State Governments to secure, by proper regulations or enactments, to the subjects of Her Britannic Majesty, the use of the several State canals on terms of equality with the inhabitants of the United States.

No communication on the subject was made by the Federal Government to the State Governments concerned, and there is no record of any request from the British Government for the making of such communication, doubtless for the reason that there was equality of treatment in the use of canals within the United States. Chief of these was the Erie Canal System; from 1855 there was an American canal at Sault Ste. Marie (Glazebrook, History of Transportation in Canada, 420); and there was (in Canada) the Chambly Canal, forming, with the Richelieu River, a route from the St. Lawrence River to Lake Champlain, which was connected with the Erie Canal System by the Champlain Canal (*ibid.*, 87–88).

A resolve of the Legislative Assembly of the Province of Canada of July 5, 1858, inquired "whether any application has been made to carry into effect" the quoted clause of paragraph 3 of Article 4 of the treaty (Journals, XVI, pt. 2, pp. 793–94); but this is not a charge of violation of a treaty (cf. Masters, *op. cit.*, 127–29). The Return to the Address dated July 10, 1858, includes no reference to Article 4 (Journals, XVI, appendix 2). Moreover, in the same volume is the report of a select committee dated July 27, 1858, which deals somewhat elaborately with the working of the treaty, including some criticism of the American construction thereof; and in this discussion Article 4 is referred to merely *arguendo*, as "proving clearly that unreserved reciprocity in its broadest sense was intended".

Regulation of the Fisheries

For the two circulars of Secretary of State Marcy on fishery laws and regulations of British North American Colonies, dated respectively July 12, 1855, and March 28, 1856, see Argument of the Honorable Elihu Root on Behalf of the United States, 476–79.

Duration of the Treaty

The term of ten years during which the treaty was to remain in force "from the date at which it may come into operation", ended on March 16, 1865; twelve months' notice of termination might be given by either party to the other "at the end of the said term of ten years, or at any time afterwards" (Article 5).

[1] This is a very narrow view of the commerce clause of the Constitution and of the treaty-making power.

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In his annual message to Congress of December 6, 1864, President Lincoln wrote: "The condition of the border will necessarily come into consideration in connection with the question of continuing or modifying the rights of transit from Canada through the United States, as well as the regulation of imposts, which were temporarily established by the reciprocity treaty of the 5th June, 1854" (Richardson, VI, 246).

A resolution for termination of the treaty passed the House of Representatives on December 13, 1864, in this form (Congressional Globe, 38th Congress, 2d session, pp. 32–33):

A joint resolution authorizing the President of the United States to give to the Government of Great Britain the notice required for the termination of the treaty of reciprocity of the 5th day of June, A.D. 1854.

Whereas by the reciprocity treaty, concluded the 5th day of June, and ratified on the 9th day of September, A.D. 1854, between the United States of America and the Queen of Great Britain, for the period of ten years from the date at which it should come into operation; and further, until the expiration of twelve months after either of the high contracting parties should give notice to the other of its wish to terminate the same, each of the high contracting parties, according to the provisions of article fifth of said treaty, being at liberty to give such notice to the other at the end of said term of ten years, or at any time afterwards, and thereby annul and abrogate said treaty; and whereas it has become desirable to terminate said treaty in the manner therein provided for, as its terms no longer appear reciprocally beneficial or satisfactory: With a view, therefore, that steps be taken for the termination of the said treaty of the 5th of June, A.D. 1854, in the mode prescribed in its fifth article, at the earliest practicable period therein provided for, and that the attention of the Governments of both countries may be directed to the adoption of all proper measures for an amicable adjustment of any matters of difference or dispute which may remain or arise in consequence of the termination of said treaty,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized and requested to give to the Government of the United Kingdom of Great Britain and Ireland the notice required by the fifth article of the said reciprocity treaty of the 5th of June, A.D. 1854, for the termination of the same.

The resolution was adopted by the Senate on January 12, 1865, in different wording; the substitute was accepted by the House of Representatives on January 16 (*ibid.*, 234, 276–77) and was approved on January 18, 1865, in these terms (13 Statutes at Large, 566):

WHEREAS it is provided in the Reciprocity Treaty concluded at Washington, the fifth of June, eighteen hundred and fifty-four, between the United States, of the one part, and the United Kingdom of Great Britain and Ireland, of the other part, that this treaty "shall remain in force for ten years from the date at which it may come into operation, and further until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same;" and whereas it appears, by a proclamation of the President of the United States, bearing date sixteenth March, eighteen hundred and fifty-five, that the treaty came into operation on that day; and whereas, further, it is no longer for the interests of the United States to continue the same in force: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notice be given of the termination of the Reciprocity Treaty, according to the provision therein contained for the termination of the same; and the President of the United States is hereby charged with the com-

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munication of such notice to the government of the United Kingdom of Great Britain and Ireland.

On the same day this instruction was written by Secretary of State Seward to Charles Francis Adams, Minister at London (D.S., 20 Instructions, Great Britain, 21):

I transmit herewith, authenticated under the seal of this Department, a copy of a joint resolution of Congress of the United States, approved on this date, in regard to the termination of the treaty concluded between the United States and Her Britannic Majesty, on the 5th of June, 1854, commonly known as the Reciprocity Treaty. The President directs me in compliance with the 5th article of that instrument, and with the requirement of the aforesaid resolution, to instruct you, to communicate to Her Majesty's Government a certified copy of the inclosed papers, and formally to notify Her Majesty's Government on the 17th of March next, or as soon thereafter as possible, that as it is considered to be no longer for the interests of the United States to continue the said treaty in force, it will terminate and be of no further effect at the expiration of twelve months from the date upon which the notice shall be given.

The notes written on March 17, 1865, to and by Earl Russell, Secretary of State for Foreign Affairs, were as follows (D.S., 88 Despatches, Great Britain, No. 903, March 23, 1865, enclosures):

[*Mr. Adams to Lord Russell*]

(Delivered at the Foreign Office. at 2. P.M. on 17 March 1865. by Jas. Ensor.)

LEGATION OF THE UNITED STATES.
London. 17 March. 1865.

MY LORD. Under instructions from the Government of the United States, I have the honor to transmit to your Lordship a certified copy of a Joint Resolution of the Congress of the United States, approved by the President on the 18th of January 1865, in regard to the termination of the Treaty concluded between the United States and Her Britannic Majesty on the 5th of June 1854, commonly known as the reciprocity Treaty.

I have the honor further to inform you that I am directed to notify Her Majesty's Government, that, as it is considered no longer for the interests of the United States to continue this Treaty in force—it will terminate and be of no further effect as provided by the terms of the instrument, at the expiration of twelve months from the date of the reception by Your Lordship of this Notice.

I pray your Lordship to accept the assurances of the highest Consideration with which I have the honor to be My Lord
Your Lordships Most Obt. Servt.

(sd) CHARLES FRANCIS ADAMS.

The Right Honble
EARL RUSSELL.
&c &c &c

[*Lord Russell to Mr. Adams*]

FOREIGN OFFICE.
March 17. 1865.

SIR. I have the honour to acknowledge the receipt of your letter of this day, containing a Resolution of the Congress of the United States, approved by the President in regard to the termination of the Treaty of 1854, commonly known as the Reciprocity Treaty.

Her Majesty will instruct Sir Frederick Bruce on his proceeding to Washington as Her Majesty's Envoy Extraordinary, upon this subject.

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I have the honour to be with the highest Consideration. Sir
Your Most Obedient humble Servant

(sd) RUSSELL.

In his despatch of March 23, 1865, above cited, enclosing the foregoing notes, Adams reported as follows:

In accordance with the instructions contained in your Despatch N° 1241, of the 18th of January last, I addressed a note to Lord Russell on the 17th of this month giving formal notice of the termination of the Reciprocity Treaty, and inclosing at the same time a certified copy of the resolution expressing the sense of both Houses of Congress on that subject. This note was delivered by the Messenger of this Legation at the Foreign Office at 2 P.M., notice of which was entered by him on the envelope, and also reported to me on his return. Not long afterwards I received from his Lordship his own acknowledgment of the reception of it. Copies are herewith transmitted.

On the effects of the treaty on trade, its abrogation, and the reasons therefor, see Reciprocity and Commercial Treaties, 72–89; Masters, *op. cit.*, 105–226, and statistical tables at pages 250–56; and Shippee, *op. cit.*, 89–179.

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Treaty Series No. 194
10 Statutes at Large, 1101–2
18 *ibid.*, pt. 2, Public Treaties, 460

166

LOOCHOO (RYUKYU) : JULY 11, 1854

Compact, signed at Naha July 11, 1854. Original in English and Chinese.
Submitted to the Senate December 12, 1854. (Message of December 5, 1854.) Resolution of advice and consent March 3, 1855. Ratified by the United States March 9, 1855. Not subject to ratification by Loochoo. Proclaimed March 9, 1855.
The English version of the compact is first printed; then follows the Chinese version, which is reproduced in facsimile (somewhat reduced) page for page from the original document.

Hereafter, whenever Citizens of the United States come to Lew Chew, they shall be treated with great courtesy and friendship. Whatever Articles these people ask for, whether from the officers or people, which the Country can furnish, shall be sold to them; nor shall the authorities interpose any prohibitory regulations to the people selling, and whatever either party may wish to buy shall be exchanged at reasonable prices.

Whenever Ships of the United States shall come into any harbor in Lew Chew, they shall be supplied with Wood and Water, at reasonable prices, but if they wish to get other articles, they shall be purchaseable only at Napa.[1]

If Ships of the United States are wrecked on Great Lew Chew or on Islands under the jurisdiction of the Royal Government of Lew Chew, the local authorities shall dispatch persons to assist in saving life and property, and preserve what can be brought ashore till the Ships of that Nation shall come to take away all that may have been saved; and the expenses incurred in rescuing these unfortunate persons shall be refunded by the Nation they belong to.

Whenever persons from Ships of the United States come ashore in Lew Chew, they shall be at liberty, to ramble where they please without hindrance or having officials sent to follow them, or to spy what they do; but if they violently go into houses; or trifle with

[1] Or Naha, where the compact was signed; the port and chief town of Okinawa Shima, the largest of the Ryukyu Islands; that island is the "Great Lew Chew" of the paragraph following.

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women, or force people to sell them things, or do other such like illegal acts, they shall be arrested by the local officers, but not maltreated, and shall be reported to the Captain of the Ship to which they belong for punishment by him.

At Tumai [1] is a burial ground for the Citizens of the United States, where their graves and tombs shall not be molested.

The Government of Lew Chew shall appoint skillful pilots who shall be on the lookout for Ships appearing off the Island, and if one is seen coming towards Napa, they shall go out in good boats beyond the reefs to conduct her in to a secure anchorage, for which service the Captain shall pay the Pilot, Five Dollars, and the same for going out of the harbor beyond the reefs.

Whenever Ships anchor at Napa, the officers shall furnish them with Wood at the rate of Three Thousand Six hundred copper cash per thousand catties; [2] and with Water, at the rate of 600 copper cash (43 cents) for one thousand catties, or Six barrels full, each containing 30 American Gallons.

Signed in the English and Chinese languages by Commodore Matthew C. Perry, Commander in Chief of the U.S. Naval Forces in the East India, China and Japan Seas, and Special Envoy to Japan, for the United States; and by Sho Fu fing, Superintendent of Affairs (Tsu li-kwan) in Lew Chew, and Ba Rio-si, Treasurer of Lew Chew at Shui, for the government of Lew-Chew, and copies exchanged, this 11th day of July, 1854. or the reign Hien fung, 4th Year, 6th moon, 17th day, at the Townhall of Napa.

M, C, PERRY

[1] Tomai, or Tomari, a village adjacent to Naha. For the location of Tumai, see the chart entitled "The Harbor of Napha Lew Chew I[d]" in Narrative, II; and compare Hydrographic Office Charts No. 1912, edition of December 1940, and No. 2338, edtion of December 1932.

[2] In rule IV of the regulations annexed to the convention with China of November 8, 1858 (12 Statutes at Large, 1069–80), it was agreed that a catty was 1⅓ pounds avoirdupois.

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布政大夫馬良才

應遵執據

紀年一千八百五十四年七月十一日

咸豐四年六月十七日在那霸公館立

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NOTES

This compact (as it was called when made and in the records of the period) was signed during the celebrated mission of Commodore Matthew Calbraith Perry to the Far East in 1853–54; both in time and in circumstance the compact is closely related to the treaty with Japan of March 31, 1854 (Document 164), and is, in a sense, a sequel thereto. The editorial notes to Document 164 are in considerable part relevant here.

The despatches of Commodore Perry to the Secretary of the Navy during the course of his mission are mostly printed in Senate Executive Document No. 34, 33d Congress, 2d session (serial 751), hereinafter generally cited as "serial 751". The originals of those despatches in the archives of the Navy Department are the source texts for such of them as are here quoted.

Commodore Perry's report of his mission is printed in Senate Executive Document No. 79, 33d Congress, 2d session (serials 769–71), a work of three volumes,[1] the first two of which are entitled "Narrative of the Expedition of an American Squadron to the China Seas and Japan, Performed in the Years 1852, 1853, and 1854, under the Command of Commodore M. C. Perry, United States Navy. . . ." From page 1 of the first volume it appears that the manuscript of the report was transmitted to the Secretary of the Navy by Commodore Perry on August 27, 1855, and by the Secretary of the Navy, James C. Dobbin, to the Secretary of the Senate on the following day. But it is to be noted that papers of a later date than the transmittal of the report are included in the publication (e.g., the letter of January 8, 1856, in vol. 1, pp. 482–83, and the letter of July 16, 1856, in vol. 2, p. 408), and the prefatory note to volume 2 is dated June 10, 1857. The work is hereinafter cited as "Narrative".

An important first-hand account of the mission of Commodore Perry is the journal of Samuel Wells Williams, who ranked as Chief Interpreter ("A Journal of the Perry Expedition to Japan", printed in 37 Transactions of the Asiatic Society of Japan, pt. 2, pp. i–ix, 1–259; the work is hereinafter cited as "Williams"). The journal of Dr. Williams is the more important because it was not made available to Commodore Perry or to the compiler of the Narrative (see Williams, vi).

For convenience of reference there is printed in the notes to Document 164 (pp. 493–94) a summary calendar of the itinerary of Commodore Perry during his mission. In the course of that mission Commodore Perry made five visits to Loochoo.

The Government of Loochoo

The Government with which this compact was made is called therein (paragraph 3) "the Royal Government of Lew Chew"; it had jurisdiction within the archipelago now properly known as the Ryukyu

[1] Also printed as House Executive Document No. 97, of the same Congress and session (serials 802–4), with the same pagination.

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Islands, which are part of the Japanese Empire;[1] the form "Ryukyu", the transliteration from the Japanese, is not to be found in the correspondence and papers of the time; so herein, for convenience, the form used is "Loochoo", which is one of various transliterations from the Chinese (such as Liukiu, Luchu, and Lew Chew; the last is the style generally used by Commodore Perry).[2]

The Loochoo Government was not that of a fully sovereign state; Japanese supervision or overlordship was exercised, not by the Government at Yedo (Tokyo), but by one of the daimios, or chief territorial nobles of Japan,[3] whose daimiate of Satsuma was in the island of Kyushu.[4] Moreover, to China tribute was periodically paid by Loochoo.

The views of the local authorities on this duality of subordination were at least partially disclosed on July 8, 1854, when a draft treaty presented by Commodore Perry was discussed with the Regent and Chief Treasurer. The conversation is thus reported (Williams, 240):

> To our surprise, the greatest objection they made was to the preamble, in which it was stated that Lewchew and the United States entered into a treaty of amity, saying that this would offend the Chinese emperor, to whom they gave their allegiance, and who would visit his wrath upon them if they assumed an independent position, as this preamble asserted. In reference to Tuchara [5] and Japan, they said that the trade with Satsuma was carried on mainly for the purpose of procuring rare and fine articles to carry with them to China when they took tribute to Peking. They wished to say nothing respecting the latter trade and evaded a reply when I asked them if they did not take tribute to Kagosima also. The admission of being tributary to China seemed to please them, rather than be a humiliation, and the real fealty they are in to Satsuma must be a sore

[1] The Loochoo or Ryukyu Islands, part of the chain known as Nansei Shoto, or Southwestern Islands of Japan, between Kyushu and Formosa, are in three groups, northern (Amami Gunto), central (Okinawa Gunto), and southern (Sakishima Gunto); their general location is within 29° and 24° north latitude and 123° and 130° east longitude. Naha (Napa, Nafa, Napha), where the compact was signed, is the chief port of the largest island, Okinawa Shima (in the central group); that island has frequently been styled Loochoo or Great Loochoo (see Hydrographic Office Charts Nos. 2194, "Nansei Shoto", and 2338, "Okinawa Gunto"; and Chamberlain, "The Luchu Islands and Their Inhabitants", 291–97, in Geographical Journal, V, 289–319, 446–62, 534–45; see also a paragraph on Ryukyu in Papinot, Historical and Geographical Dictionary of Japan, 521).

As to the territorial extent of the Government of Loochoo in 1854, see footnote 4, *infra*.

[2] See Chamberlain, *op. cit.*, 542–44, "On the Name Luchu".

[3] The territories of the daimios were surrendered to the Emperor of Japan in 1869 (see Gubbins, Progress of Japan, 206–9).

[4] According to Chamberlain, *op. cit.*, 309–10, there had been an arrangement early in the seventeenth century by which the northern group of the Loochoo Islands became the "exclusive property of Satsuma" and the others were left to Loochoo upon payment of a suitable yearly tribute and admitting at Court a Japanese political agent "who was to exercise supervision over the foreign affairs of the kingdom".

For the early history of Loochoo, see also Leavenworth, "History of the Loochoo Islands", 103–13, in 36 Journal of the North China Branch of the Royal Asiatic Society, new series, 103–19.

[5] Takara Shima (at one time called Pennell or Pennell Roy Island), one of the small group known as the Linschoten Islands, now among the Southwestern Islands of Japan (Nansei Shoto); Takara Shima, approximately 29°8′ north latitude and 129°12′ east longitude, lies to the north of the northern group of the Loochoo or Ryukyu Islands (see Hydrographic Office Charts Nos. 2194 and 5302).

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subject and a grievous burden, or it would hardly be so mortifying to them to say aught respecting it.

Also to be quoted is this relevant excerpt from a letter (received July 15, 1854) "addressed to Commodore Perry by the officials of Napha" (Narrative, I, 222; see Williams, 253–55):

Since the days of the Ming dynasty it has been our great pride to be ranked as one of the outer dependencies of China, and she has for ages given our king his investiture, and we have returned whatever we could prepare for tribute; nothing of great importance to our nation has transpired but it has been made known to the Emperor. Whenever the time came for us to send up the tribute, we there [in China] [1] purchased silk and pongee to make suitable official robes and caps for ourselves, and selected medicines and other things for the use of the state; and if they were not enough for our own use, then through the island of Tuchara we have intercourse with a friendly and near nation,[2] and exchange for our productions, as black sugar, saki, grass-cloth, and other articles, things which we send to China as tribute.

The Government of Loochoo in 1853–54 was a regency, and this fact gave rise to some uncertainty and confusion among the personnel of the expedition (see Narrative, I, 160, footnote, 193, 318–19). Accurate information regarding the reigning family seems not to have been obtained until after the signing of the compact and just before Commodore Perry finally left Loochoo. This account was written on July 15, 1854 (Williams, 251–52):

I was told to-day that the late Regent, Sho Rai-mo, 尙大謨, whose removal from office caused so much speculation last year when we returned [June 23, 1853] from the Bonin Islands, was still living in Shui; he had resigned his position as Tsu-li-kwan from age, conscious of his inability to undergo the fatigues likely to come upon him through the squadron, and management of all its demands. No coercion was used; it was a voluntary resignation. This removes all the reports we heard then and, from the way I was told, I am inclined to believe it to be true.

It appears that the present and last Regent are both allied to the royal family, whose surname is Sho, and they are cousins. The prince is now eleven years old, and will probably receive his investiture from China in four years; his name is 泰, Sho Tai. His father died in 1847 aged 38, leaving this son; his name was Sho Iku, 尙育, and he had reigned about ten years. The prince's grandmother, who died a few days after we went [in February 1854] to Japan, was the wife of the king regnant when the "Alceste" [3] was here in 1817; she it was who had been so alarmed when Captain Shadwell [4] went up to Shui that she had been taking broths for seventeen months when we visited the palace in June last year. This palace is an extensive structure, much larger and exhibiting more skill than anything we saw in Japan. It was partly rebuilt, and thoroughly repaired about twenty years ago, but the woodwork is rapidly decaying from the climate, no paint being used upon it, nor anywhere else in Lewchew. Its general design so much resembles a fortress that one can hardly avoid concluding that such was one of the objects in view in building it.

[1] The brackets are in the quoted work.

[2] Meaning Japan.

[3] The British frigate *Alceste* and sloop of war *Lyra* were at Loochoo in September and October 1816 (see Hall, Account of a Voyage of Discovery, *passim*, and p. cxv of the appendix thereto).

[4] Commander Charles (later Admiral Sir Charles) Frederick Alexander Shadwell, in the British war steamer *Sphinx*, visited Loochoo in February 1852,

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This comment on the ruling power in Loochoo was written on June 8, 1853 (Williams, 26):

> I look upon Lewchew as a dependency of Satzuma, (rather than subject to Japan) by whose prince it was conquered entirely in the 17th century, 1609. That principality monopolizes the trade and manages the relations and policy of the island, allowing the voyage of homage to Fuhchau every year to keep up a profitable trade and a shadow of independence among the natives. The power is wielded by the gentry whom long usage has formed into a caste, and they sway the timid, defenseless people by a system of espionage which spreads distrust and fear of others over the whole community. The gentry maintain the spies and are the depositories of all learning, education and office, doing nothing to elevate or improve their serfs. Apparently, their sway is very mild, for no swords in the hands of soldiers nor even whips in the hands of guards are seen in the streets, but it is because all resistance has ceased, and a motion of a fan or a wink is as effectual as a blow.

In several of his despatches Commodore Perry wrote rather flatly that Loochoo was a dependency of Japan; he sought unavailingly to have Naha named as one of the treaty ports in the treaty with Japan of March 31, 1854 (Document 164); the opinion on the sovereignty which he finally expressed (despatch No. 53, July 18, 1854; serial 751, p. 168) one week after the signing of the compact was that "Lew Chew it appears, is in a measure an independent sovereignty, holding only slight allegiance either to Japan or China, but preferring rather its relationship to the latter Empire; that the Islands stretching from Formosa to Kiusiu are all [1] under its sovereignty, and are in such intercourse with the parent Island Great Lew Chew, as the imperfect character of their means of navigation will allow".

There is authority for stating that treaties between France and Loochoo and the Netherlands and Loochoo were made respectively in 1855 and 1859 (Chamberlain, *op. cit.*, 313); treaties of Loochoo with those two powers are mentioned in a communication of "Judicial Officers of the Kingdom of Lew Chew" to John A. Bingham, Minister to Japan, dated August 19, 1878, in which it is stated that originals thereof and also of this compact were delivered to the Japanese

arriving at Naha on the 6th and leaving on the 17th. The objects of his mission were to deliver a communication from Lord Palmerston, Principal Secretary of State for Foreign Affairs, to the authorities of Loochoo regarding the unfriendly treatment of the resident missionary, Dr. B. J. Bettelheim, a British subject, and to inquire generally into Bettelheim's position. On February 11 Commander Shadwell, with his officers and a guard of seamen and marines, landed in state and, despite objections raised by the authorities, proceeded to Shuri, the capital. There the Commander and his officers were received by the Regent, ministers, and a large retinue, and conducted to the "hall of audience", where Lord Palmerston's communication was formally presented and a conference was had, chiefly concerning the affairs of Dr. Bettelheim. Following the conference the officers were entertained at the residence of the Regent; and subsequently presents were exchanged. An account of this mission of Commander Shadwell, with the text of the mentioned communication of Lord Palmerston, is in Smith, Lewchew and the Lewchewans, 87–92.

[1] This is not to be taken literally, for "all" would include islands adjacent to Kyushu; the meaning intended is doubtless all three groups of the Loochoo Islands.

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Foreign Office in 1873 (D.S., 38 Despatches, Japan, No. 844, September 2, 1878, enclosure, translation); but the texts of the French and Netherland treaties have not been found in available treaty collections.

The File Papers

It seems that the compact was signed in quadruplicate (see Williams, 243); Commodore Perry's despatch No. 63 to the Secretary of the Navy, James C. Dobbin, dated U.S.S. *Mississippi*, Hong Kong, September 5, 1854 (a copy of which is in the treaty file), reads as follows:

> I have the honor to transmit herewith one of three originals of the compact entered into by me with the Royal Government of Lew Chew.
> One will be taken home by me, via Europe, and another will go home with other papers in the "Mississippi".

That despatch of Commodore Perry and its enclosure were sent to Secretary of State Marcy by the Secretary of the Navy with a covering letter of November 17, 1854 (D.S., Miscellaneous Letters, November–December 1854; and see the acknowledgment of November 20, 1854, in D.S., 43 Domestic Letters, 229–30).

The original compact then received is in the treaty file and is the only one now available of the three mentioned by Commodore Perry; it is a manuscript of two double sheets of folio paper, which are bound with a white ribbon having attached two small paper wafers on one of which is impressed on red wax an American Legation seal. The wafers are now somewhat torn, and the seal is broken. The writing is on the first five of the eight pages, the English version in the left columns and the Chinese in the right; pages 6 to 8 are blank except for this endorsement in the upper right corner of page 8: "Compact between the United States of America and the Kingdom of Lew-Chew. July 11th 1854".

In the text following the headnote, the English version is first printed, followed by a reduced facsimile of the Chinese, page for page from the original and in the same order of pagination.

It will be observed that, while the compact bears the Loochoo seal, it is not signed by the Loochoo Plenipotentiaries; the reasons for this were thus noted at the time (Williams, 242, July 10, 1854):

> We [Dr. Williams and Flag Lieutenant Silas Bent, U.S.N.] discussed [with the Loochoo Plenipotentiaries] the various points of the treaty, to most of which they agreed, but made more objection to the conclusion, desiring to have it read that as the Commodore ordered these various points, they humbly consented to allow them; but, as this arrangement was inadmissible, they at last agreed to express it that they consented to it, he signing it first, and they affixing a seal only to authenticate it and avouch their willingness. Fear of China was the only reason they assigned. It was a singular discussion; we desiring to have them sign this document on terms of equality as a sovereign state, and they debating every inch, preferring to own subjection to China and great inferiority to us.

The other file papers are three only: the attested resolution of the Senate of March 3, 1855; the United States instrument of ratification

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of March 9, 1855, the text of which follows; and the original proclamation of the same date:

Franklin Pierce, President of the United States of America.

To all to whom these presents shall come, Greeting:

Whereas, a Compact between the United States of America and the Royal Government of Lew Chew was entered into at Napa, on the eleventh day of July, one thousand eight hundred and fifty-four, the original of which Compact, being in the English and Chinese languages, is hereto annexed:

And whereas the Senate of the United States, by their Resolution of the third instant, two-thirds of the Senators then present concurring, did advise and consent to the ratification of the said Compact:

Now therefore I, Franklin Pierce, President of the United States of America, having seen and considered the said Compact, do, in pursuance of the aforesaid advice and consent of the Senate, accept, ratify and confirm the said Compact and every clause and article thereof.

In faith whereof, I have caused the seal of the United States of America to be hereunto affixed.

Given under my hand at the City of Washington this ninth day of
[Seal] March in the year of Our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the seventy-ninth.

FRANKLIN PIERCE

By the President:
W. L. MARCY,
Secretary of State.

The instrument of ratification in the file must be deemed the original and not a duplicate. In the compact there is no mention of ratification; so far as Loochoo was concerned, the compact was completely definitive and effective on signature; no notice of ratification by the United States was given to Loochoo, and none was necessary.

Proclamation of the compact issued on the date of the ratification in this form; it will be noticed that ratification "on both parts" is recited:

By the President of the United States of America.

A PROCLAMATION.

Whereas a Compact between the United States of America and the Royal Government of Lew Chew was entered into at Napa, by their respective Plenipotentiaries, on the eleventh day of July one thousand eight hundred and fifty-four,—which Compact is word for word as follows:

[Here follows the original compact in English and Chinese]

And whereas the said Compact has been duly ratified on both parts:

Now, therefore, be it known that I, Franklin Pierce, President of the United States of America, have caused the said Compact to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed:

Done at the City of Washington this ninth day of March in the year
[Seal] of Our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States of America the seventy-ninth.

FRANKLIN PIERCE

By the President:
W. L. MARCY.
Secretary of State.

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The Datal Clause

The date of the compact, July 11, 1854, is also stated as the 17th day of the 6th moon of the 4th year of "the reign Hien fung" (final clause). This is the date by the Chinese calendar, corresponding in the Japanese calendar to the 17th day of the 6th month of the 1st year of Ansei (or 7th year of Kaei); see, under "The Datal Clause", the discussion of the Japanese calendar in the editorial notes to Document 164, and "Japanese Chronology", by Ernest Wilson Clement, in 37 Transactions of the Asiatic Society of Japan, pt. 3, 124–25, 251.

Proceedings in the Senate

For the proceedings in the Senate, where a simple resolution of advice and consent was unanimously adopted on March 3, 1855, see Executive Journal, IX, 392, 411, 434–35.

The only paper accompanying the compact when it was submitted to the Senate was the instruction of Secretary of State Everett to Commodore Perry of February 15, 1853; that instruction and the despatch of Perry of December 14, 1852, to which it was a response, are both printed in the editorial notes to Document 164; the text of the instruction had (with other papers listed in those editorial notes) been previously communicated to the Senate on March 31, 1854, and is printed in Senate Confidential Executive Document No. 21, 33d Congress, 1st session (34 Regular Confidential Documents, 305–34); but the despatch of December 14, 1852, was not communicated to the Senate until January 30, 1855, with the other papers printed in serial 751.

Instructions

In the instructions written to Commodore Perry before his departure from the United States on his mission, there are paragraphs which may be deemed to include reference to Loochoo; the following is from the orders of the Secretary of the Navy dated November 13, 1852 (printed in the editorial notes to Document 164):

> Your attention is particularly invited to the exploration of the Coasts of Japan, and of the adjacent Continents and islands.
>
> You will cause linear or perspective views to be made of remarkable places, soundings to be taken at the entrances of Harbors, rivers &c, on and near shoals, and collect all the hydrographical information necessary for the construction of Charts.
>
> You will be careful to collect from every reliable source, and particularly from our Consular or Commercial Agents, all the information you can, of the social, political, and Commercial conditions of the Countries and places you may visit, especially of new objects of Commercial pursuits. To these ends you will call into activity all the various talents and acquisitions of the Officers under your Command. The results of such labors and of all such researches, you will communicate to the Department as often and as complete as practicable.

In the letter from Charles M. Conrad, Secretary of State ad interim, to John P. Kennedy, Secretary of the Navy, dated November 5, 1852 (D.S., 3 Special Missions, 1–15; printed in the editorial notes to Document 164), this was written:

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If the squadron should be able, without interfering with the main object for which it is sent, to explore the coasts of Japan and of the adjacent continent and Islands, such an exploration would not only add to our stock of geographical knowledge, but might be the means of extending our commercial relations and of securing ports of refuge and supply for our whaling vessels in those remote seas. With this view he [Commodore Perry] will be provided with powers authorizing him to negotiate treaties of Amity and Navigation with any and all established and independent sovereignties in those regions.

In the event of such a voyage he will inform himself, as far as practicable, of the population, resources and natural productions of the country, and procure and preserve specimens of the latter and the seed of such plants as may be peculiar to the country.

The full powers referred to in the foregoing were five in number, of this tenor and date, and in blank to the extent of leaving to be filled in the style of the other negotiating Government (D.S., 1 Special Missions, 347–48):

Millard Fillmore, President of the United States of America,

To all to whom these presents shall come, Greeting:

Know, Ye, that reposing special trust and confidence in the integrity, prudence and ability of Matthew C. Perry, a Captain in the Navy of the United States, I have invested him with full power, for and in the name of the said United States, to meet and confer with any person or persons furnished with like powers on the part of and with him or them to negotiate, conclude and sign a Convention or Conventions, Treaty or Treaties, of and concerning the friendship, commerce and navigation of the two countries, and all matters and subjects connected therewith, which may be interesting to the two nations; submitting the same to the President of the United States for his final ratification by and with the advice and consent of the Senate of the United States.

In testimony whereof I have caused the seal of the United States to be hereunto affixed.

[Seal] Given under my hand at the City of Washington, the eleventh day of November, in the Year of Our Lord One thousand eight hundred and fifty-two, and of the Independence of the United States of America the seventy-seventh.

MILLARD FILLMORE.

By the President:
EDWARD EVERETT,
Secretary of State.

None of those five blank powers was used; none was necessary for Loochoo, where such instruments, as well as treaty procedure generally, were quite unknown.

The subject of Loochoo was first specifically put forward in the despatch to the Secretary of the Navy written from Madeira (December 14, 1852) while Commodore Perry was on his way to the Far East; these passages are therefrom excerpted (the entire despatch is printed in the editorial notes to Document 164):

As a preliminary step, and one of easy accomplishment, one or more ports of refuge and supply to our whaling, and other ships, must at once be secured, and should the Japanese Government object to the granting of such ports upon the main land, and they cannot be occupied without resort to force, and bloodshed, then it will be desirable in the beginning, and indeed necessary, that the Squadron should establish places of Rendez-vous at one or two of the Islands South of Japan, having a good harbour, and possessing facilities for obtaining water and supplies, and by kindness and gentle treatment conciliate the inhabitants, so as to bring about their friendly intercourse.

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The Islands called the Loo-Choo group are said to be dependencies of Japan, as conquered by that power centuries ago; but their actual sovereignty is disputed by the Government of China.

These Islands come within the jurisdiction of the Prince of Satsuma, the most powerful of the Princes of the Empire, and the same who caused the unarmed American ship Morrison,[1] on a visit of mercy to be decoyed into one of his ports and then fired upon from batteries hastily erected. He exercises his rights more from the influence of the fear of the simple Islanders, than from any power to coerce their obedience, disarmed as they long have been, from motives of policy, they have no means, even if they had the inclination, to rebel against the grinding oppression of their rulers.

Now it strikes me, that the occupation of the principal ports of those Islands, for the accommodation of our ships of war, and for the safe resort of merchant vessels of whatever nation, would be a measure, not only justified by the strictest rules of moral law, but what is also to be considered by the laws of stern necessity, and the argument may be further strengthened by the certain consequence of the amelioration of the condition of the Natives, although the vices attendant upon civilization may be entailed upon them.

In my former commands upon the Coast of Africa, and in the Gulf of Mexico, when it fell to my lot to subjugate many Towns and communities, I found no difficulty in conciliating the good will, and confidence of the conquered people by administering the unrestricted power which I held, rather to their comfort and protection, than to their annoyance, and when the Naval Forces left, they carried with them the gratitude and good wishes of their former enemies, and so I believe that the people of the Islands spoken of, if treated with strict justice, and gentle kindness, will render confidence for confidence, and after awhile the Japanese will learn to consider us their friends.

In establishing these ports of refuge, it will be desirable to provide the means to supply to the vessels, that may resort to them, and hence the necessity of encouraging the Natives in the cultivation of fruits, vegetables etc, and to carry out in part this object, gardenseeds have been provided; but to pursue the purpose still further, I have thought that if a few of the more simple agricultural implements of our own Country were sent to me for use, and for presents, they would contribute most essentially to the end in view, such for instance as the common cultivator, the plough and harrow, spades, hoes of various kinds, the threshing and winnowing machines, and especially those inventions for separating the cotton and rice from their husks.

. . . . . .

Having thus, according to my anticipations, established harbours of resort, and organized certain rules of equity to govern our intercourse with the Natives, in the payment of labour, supplies, etc[a], and having depôts of provisions, and coal near at hand, we shall be able to act with more effect in bringing about some friendly understanding with the Imperial Government; at all events steamers or whatever vessels that may be passing to and from California, and China, will find safe harbours in their way, and it may reasonably be expected, that in the course of time, the intercourse thus brought about, will lead to a better understanding of our pacific intentions.

It may be said, that my anticipations are too sanguine, perhaps they may be, but I feel a strong confidence of success, indeed success may be commanded by our Government, and it should be under whatever circumstances accomplished. The honor of the Nation calls for it, and the interest of commerce demands it. When we look at the possessions in the East of our great maritime rival England, and of the constant and rapid encrease of their fortified ports, we should be admonished of the necessity of prompt measures on our part.

By reference to the maps of the world, it will be seen that Great Britain is already in possession of the most important points in the East India and China Seas, and especially with reference to the China Seas.

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[1] Regarding the visit of the *Morrison* to Japan in 1837, see Paullin, Diplomatic Negotiations of American Naval Officers, 218–19; Nitobé, "American-Japanese Intercourse", 133–34, in Annual Report of the American Historical Association for the Year 1911, I, 129–40; and Chinese Repository, VI, 209–29, 353–80, September and December 1837.

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Singapore commanding the South Western, while Hong Kong covers the North Eastern Entrance, with the Island of Labuan on the Eastern Coast of Borneo, an intermediate point, she will have the power of shutting up at will, and controlling, the enormous trade of those seas, amounting it is said in value to 300,000 Tons of shipping carrying cargoes certainly not under 15,000,000£ Sterling*

Fortunately the Japanese and many other Islands of the Pacific are still left untouched by this unconscionable[1] Government, and as some of them lay in a route of a commerce, which is destined to become of great importance to the United States, no time should be lost in adopting active measures to secure a sufficient number of ports of refuge. . . .

The quoted despatch was thus answered by Secretary of State Everett on behalf of the President a few days before the Fillmore administration ended (D.S., 3 Special Missions, 22–24):

DEPARTMENT OF STATE,
Washington, 15th. February, 1853.

To Commodore M. C. PERRY,
Commanding the United States Naval forces in the China Seas.

SIR, Your despatch of the 14th. of December has been referred by the Secretary of the Navy to this department and by me submitted to the President.

The President concurs with you in the opinion, that it is highly desirable, probably necessary for the safety of the expedition under your command, that you should secure one or more ports of refuge of easy access. If you find that these cannot be obtained in the Japanese islands without resort to force, it will be necessary that you should seek them elsewhere. The President agrees with you in thinking, that you are most likely to succeed in this object in the Loo Choo islands. They are from their position well adapted to the purpose; and the friendly and peaceful character of the natives encourages the hope that your visit would be welcomed by them.

In establishing yourself at one or two convenient points in those islands with the consent of the natives, you will yourself pursue the most friendly and conciliatory course and enjoin the same conduct on all under your command. Take no supplies from them except by fair purchase for a satisfactory consideration. Forbid and at all hazards prevent plunder and acts of violence on the part of your men toward these simple and unwarlike people;—for such they are described to be. Let them from the first see that your coming among them is a benefit and not an evil to them. Make no use of force, except in the last resort for defence if attacked, and self-preservation.

The President approves the idea suggested by you of encouraging the natives to turn their attention to agriculture, and has given orders to have the implements of husbandry mentioned by you sent out by the Vermont. He has also directed a small printing press with type and materials for printing of all kinds to be sent out by the Vermont.

The President is gratified to perceive that you are impressed with the importance of the enterprize confided to your direction, the success of which will mainly depend upon your Prudence and address. It will attract a large share of the attention of the civilized world; and the President feels great confidence that the measures adopted by you will reflect credit on your own Wisdom and discretion and do honor to your country.

I am, Sir, respectfully,
Your obedient servant,

EDWARD EVERETT.

* See G. Crawford's [John Crawfurd, Governor of Singapore 1823–26] opinion, in [Henry Keppel] "The Expedition to Borneo by HM Ship Dido" chapter 24th Published by Harper & Brothers, New York 1846.

[1] In Narrative, I, 85–87, where this despatch is printed, the wording here is "this 'annexing' government".

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The foregoing instruction is, perhaps with intent, only partially and vaguely responsive to the views expressed by Commodore Perry and to his hope that the Navy Department (meaning here, in fact, the President, acting by the Secretary of the Navy) would "approve the course I propose to pursue". The quoted instruction of November 5, 1852, looked toward "securing ports of refuge and supply for our whaling vessels" by treaty with "established and independent sovereignties". The proposal of Perry (considering the region to be a dependency of Japan, under "grinding oppression") was for "occupation of the principal ports" of Loochoo, not only for the accommodation of American war vessels but "for the safe resort of merchant vessels of whatever nation". Such an occupation, which Perry deemed justified by "moral law" and by "stern necessity", with consequences both beneficial and detrimental to the natives, could be nothing but permanent occupation; and the despatch must be read as a whole, including the references to British possessions and the conclusion in favor of "active measures to secure a sufficient number of ports of refuge". The obtaining of such ports for the use of the American squadron was approved at Washington; the more ambitious suggestions were passed over without other acquiescence than might perhaps be inferred from the absence of any hint of disapprobation and the concluding cordial expression of confidence.[1]

First Visit to Loochoo

During the course of his mission Commodore Perry himself was five times at Loochoo; but from the beginning of the first until the close of the last of those five "visits", as they are termed in the Narrative, Naha was continuously a port of rendezvous for the American squadron; throughout the entire period from May 26, 1853, to July 17, 1854, when there was not one or more of the vessels of Commodore Perry in the harbor of Naha, some of the personnel of the squadron were stationed there on shore.

Commodore Perry first arrived at Naha on May 26, 1853; besides his flagship, the *Susquehanna*, he had with him the *Mississippi*, the *Saratoga*, and the *Supply* (the last-named vessel joined the others on May 28; see serial 751, p. 28); this first visit to Loochoo lasted only two weeks, or until June 9; during its progress Perry thus reported in his despatch No. 13, of June 2, 1853 (*ibid.*, 28–29):

> This beautiful Island is a dependency of Japan, and is governed by the same laws; the people are industrious and inoffensive, and I have already made considerable progress in calming their fears, and conciliating their friendship, and as I propose to make this a port of Rendezvous for the Squadron. It may be hoped that in the course of time the whole population of the Island may become quite friendly.

[1] Nothing has been found to indicate just when the instruction of February 15, 1853, was received by Commodore Perry (see Narrative, I, 87); perhaps before he left the Yangtze Kiang for Loochoo on May 23, 1853, or perhaps by the *Plymouth*, which arrived at Naha on June 13, eleven days out from Shanghai (serial 751, pp. 40–41). Perry was back at Naha from the Bonin Islands on June 23; on June 25 he wrote that his instructions directed him "to seek out, and establish ports of refuge and refreshment for vessels, traversing these distant seas" (serial 751, pp. 29–30).

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They have already consented to receive compensation for the supplies which they are to furnish the Ships.

I am only waiting here to establish a good understanding with these people before my visit to Japan, that information of our friendly demonstration towards the Loo Chooans may precede us, and assure the Japanese that we have no hostile intentions.[1]

More extensive accounts of the first stay at Naha are in Narrative, I, 151–95 (including a report of exploration, pp. 166–86), and in the journal of Williams (pp. 7–27), who had previously, in 1837, been at Loochoo (*ibid.*, 7). Communication with the authorities was in Chinese; one of the two interpreters (Dr. Williams being the other) was a medical missionary, Dr. Bettelheim, who had been in Loochoo since May 1846 and who is described as "a converted Jew, and by birth a Hungarian, not, however, in holy orders, but a christian layman. He had become a British subject by naturalization, and the husband of an English woman" (Narrative, I, 225; Smith, Lewchew and the Lewchewans, iv–v, 5); Dr. Bettelheim and his family were the only European residents. The Regent visited Commodore Perry on the *Susquehanna;* contrary to the wishes of the Regent, the return call was made by Commodore Perry, with some pomp and circumstance, at the palace at Shuri (Shui), about three miles from Naha, and only then was the hospitality of the Regent accepted. Overruling the protest of the Regent, a house was obtained for the use of the personnel of the squadron; presents for the Queen Dowager and others were delivered; and gifts from the Regent were received (see Williams, 7–27, *passim;* Narrative, I, 151–65, 187–95, *passim*).

There were six communications in writing: (1) the protest of May 31 of the mayor of Naha regarding the house; (2) the answer thereto of June 1; (3) the petition of the Regent of June 3; (4) another petition of the Regent, of June 4; (5) the answer of June 4 to the petitions of June 3 and 4; and (6) the note of June 7 from Commodore Perry to the Regent "expressing his satisfaction at the reception, dislike of the spies tagging us everywhere, wishing him to appoint a man to take the money for the supplies and telling him of his intention of going to Japan" (see Williams, 14, 15–16, 17, 19, 23). Dr. Williams' translation of the Regent's petition of June 3 is printed here for its procedural interest and because it illustrates the formal courtesy of the authorities of Loochoo (Narrative, I, 159–60, footnote):

A prepared petition. Shâng Tá-Mú, Regent of Loochoo, etc., etc., hereby urgently petitions upon important matters. On the 21st day of the present month [2] I received Your Excellency's verbal orders that on the 30th day of the present month, at 10 o'clock, you had concluded to come to the Capital to return

[1] Acknowledgment of the quoted despatch was made by an instruction of the Secretary of the Navy of September 5, 1853, with approval of "your course as indicated" therein (serial 751, p. 29).

[2] A confusing and erroneous parenthetical interpolation, seemingly by the compiler of the Narrative, is here omitted.

The petition (of June 3, 1853) is dated on the 27th of the month then current according to the Chinese calendar. So here (and similarly elsewhere) the "21st day" means six days before the date of the petition, or May 28.

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your respects. Also, on the 26th instant, Ching Changlieh, the mayor of Naha, received Your Excellency's communication saying that on the 30th instant, at 10 o'clock, it was decided to go up to Shuri, the Capital, to return the visit of the Regent at the palace, and wished this to be distinctly stated in the proper way.

Now, it is plain to all that the Capital and towns of this little country are quite different from the provincial capitals of China; here there is only a palace for the King, and no halls, official residences, markets, or shops; and up to this time no envoy from a foreign country has ever entered into the palace. In February of last year an English general [1] came here bearing a public letter and was strenuous to enter the palace, there to deliver it; the high officers repeatedly requested that it might be given them elsewhere, but he refused and forced himself into the palace. At that time, from the young Prince and Queen Dowager down to the lowest officers and people, all were alarmed and fearful, hardly keeping soul and body together; and the Queen Dowager has been dangerously sick even to this day, the physicians giving her broths and medicines for her alarming ailments, which are not yet removed. All the officers in the country are really troubled and grieved on this account; and having heard that the ruler of your country is indued with great kindness and vast compassion, and highly prizes humanity and benevolence, they urgently beg of Your Excellency that, respectfully embodying the humanity and benevolence of your sovereign and his great love for men, you will take the case of the Queen Dowager and her severe indisposition into your favorable consideration and cease from going into the palace to return thanks. If you deem it necessary to make this compliment, please go to the residence of the Prince, there to make your respects in person. Respecting the matter of renting a house for residing, it has been stated by the mayor of Naha that on the 24th instant he had clearly shown forth the circumstances, and on the 26th had received Your Excellency's reply, in which it was remarked "that whenever the officers and men from the ships were on shore, rambling about, they had no place of resort, and that, as there were no inns in the country, if they were overtaken by rain or bad weather or were detained so that they were unable to return on board before night, there was no place to rest at, unless they abruptly entered the houses of the people; that as the men on board ship were ignorant of the Loochooan language, if they wanted only a cup of water they could not get it; for these reasons one or two houses were required, and if they were wanted for other purposes, these were all of a peaceable and friendly nature, but it was indispensable to have one. The mayor (of Naha) having intimated that the building already occupied by the sailors was a *kung-kwàn*, or public hall, if the officers would designate another building, they would remove to it according to their wishes." I find that the building now occupied is a public house for the deliberations of officers and police and meetings on public business; but having sought out a place that can be used, I find that the *Shing-hien-sz'*, or Holy Manifesting Monastery, for preserving the anchorage of ships, can be obtained for a residence; and I beg that orders for removal to this place, as a temporary residence, may be given. Then will the Prince and authorities, one and all, be greatly obliged by this great kindness. An important petition.

Hien fung, 3d year, 4th moon, 27th day (June 3, 1853).

Visit to the Bonin Islands

On June 9, 1853, Commodore Perry, with the *Susquehanna* and the *Saratoga*, sailed for the Bonin Islands; the *Mississippi* and the *Supply* were left at Naha, with some of the personnel ashore in houses or encamped. The Bonin Islands (Ogasawara Gunto) are part

[1] The reference is to the visit to Loochoo of Commander Shadwell, R.N., in February 1852.

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of the Japanese Empire;[1] at the time there was some basis for a claim of sovereignty thereover by Great Britain; only Peel Island (Chichi Shima, in the central group) was inhabited;[2] a small colony had been established there in 1830 on the initiative of Richard Charlton, British Consul at Honolulu (see Cholmondeley, History of the Bonin Islands, 17–20; also the correspondence of December 22 and 23, 1853, between Commodore Perry and Sir Samuel George Bonham, British Chief Superintendent of Trade at Hong Kong, in Narrative, I, 303–6). In 1853 the population of Peel Island numbered thirty-one (thirty-nine, according to Williams), including Americans, Englishmen, one Portuguese, Marquesans, and Hawaiians. At Port Lloyd (Futami Ko), the chief harbor of Peel Island, Perry remained from June 14 to 18; his activities during this brief period are summarized in this paragraph from Narrative, I, 211 (see *ibid.*, 195–214, *passim;* Williams, 27–35, *passim*):

> The Commodore, having been long satisfied of the importance of these islands to commerce, was induced to visit them, chiefly by a desire of examining them himself and recommending Peel Island as a stopping place for the line of steamers which, sooner or later, must be established between California and China. To this end he caused the island to be explored, the harbor to be surveyed, and a few animals to be placed upon two of the groups of islands, as the commencement of a provision for future wants. Garden seeds of every description were also distributed among the present settlers, and hopes were held out to them by the Commodore of a future supply of implements of husbandry and a greater number of animals. A suitable spot too was selected for the erection of offices, wharves, coal-sheds, and other buildings necessary for a depot for steamers. A title was obtained to a piece of land which is admirably adapted to the desired purpose. It is situated on the northern side of the bay, near its head, with a front on the water of 1,000 yards and a good depth near the shore for the length of 500 yards, it might, by the building of a pier extending out fifty feet, be conveniently approached by the largest vessel afloat.[3]

[1] The Bonin Islands (Ogasawara Gunto) are among the Southern Islands of Japan (Nampo Shoto); they comprise three groups of small islands lying east of 142° east longitude and north and south of 27° north latitude; the three groups are the northern, Parry group (Muko Shima Retto), the central, Beechey group (Chichi Shima Retto), and the southern, Coffin or Baily group (Haha Shima Retto). See Hydrographic Office Chart No. 5257.

[2] This is the statement made by Commodore Perry (see serial 751, p. 34); but Lieutenant George B. Balch, U.S.N., reported that in October 1853 there were a "few inhabitants" on the largest of the southern group of the Bonin Islands (see Narrative, II, 132–33).

[3] The land was purchased from Nathaniel Savory, of Bradford, Massachusetts, one of the original colony of 1830; Savory was "enrolled on the books of the steamer Susquehanna" (Narrative, I, 282) and was appointed "navy agent" (Williams, 33–34); and a seaman from the *Susquehanna*, John Smith, was landed at Peel Island. The deed from Savory of June 15, 1853, and the directions to Savory and to Smith given in writing by Commodore Perry at that time, are printed in Cholmondeley, *op. cit.*, 93–97. In April 1854 orders were given to Captain Joel Abbot, of the *Macedonian*, to pay off and discharge Savory, and also Smith, if the latter wished to remain, and otherwise to take him on board (see Narrative, II, 127; and for the letter of April 10, 1854, from Commodore Perry to Savory, see Cholmondeley, *op. cit.*, 107–8); but it was found that Smith, referred to as "the United States consul left there by Perry", had "gone off in search of better quarters" (Williams, 178, May 2, 1854). Savory, the story of whose life is sympathetically told in Cholmondeley, *op. cit.*, continued on the island, where he died on April 10, 1874 (*ibid.*, 163).

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Regarding his visit to the Bonin Islands, Commodore Perry reported at length to the Secretary of the Navy (serial 751, pp. 29–39; despatch No. 15, June 25, 1853, with excerpts from the "rough Journal"), suggesting "that an understanding may be had with the British Government through our Minister at London, that Port Lloyd on Peel Island, whether under the Flag of the United States or England, [or] a local Flag, may be considered a free Port, and a place of resort to vessels of all Nations, and especially a stopping place for Mail Steamers, under such regulations as may be agreed upon" (*ibid.*, 31), and putting forth as a possible alternative that if it were deemed "desirable for me to take possession of the Islands in the name of the United States, I will do so, and adopt the best means of holding them" (*ibid.*, 32).[1]

That despatch was briefly acknowledged on October 18, 1853, by the Secretary of the Navy, who wrote that it had been "perused with much interest", but made no further comment other than an expression of thanks for the journal extracts (*ibid.*, 43). A later instruction, of May 30, 1854, included these paragraphs (*ibid.*, 112–13):

> Your suggestions as to the policy and propriety of securing a Coal Depot at Port Lloyd are appreciated and approved by the Department. At some future and no distant day I have no doubt from its geographical position it will be found convenient and important for a line of steamers to Shanghae or Hong Kong from the Sandwich Islands or from San Francisco to China.
>
> Your correspondence[2] with Sir George Bonham in regard to the Bonin Islands was conducted with ability and in the right spirit.

Second Visit to Loochoo

Commodore Perry was again at Naha on June 23; the *Plymouth* had arrived on June 13, eleven days out from Shanghai (serial 751, pp. 40–41). During this "second visit" of nine days there is little of importance recorded (see Narrative, I, 215–27, *passim;* Williams, 36–46, *passim*). A newly installed Regent had taken office; he was duly entertained by Commodore Perry; and he petitioned against two Chinese assistants of Dr. Bettelheim who had come from Shanghai with the *Brenda*, a collier, on June 28 (Williams, 44–45). The question of the sovereignty seems to have been under consideration and discussion at this time (see Narrative, I, 221–23); and Commodore Perry repeated his conclusion that Loochoo was a "dependency of Japan"; in his cited despatch of June 25, 1853, he wrote:

> I Conceive however that we have already effected a great deal in securing two of the desired Ports of refuge, Port Lloyd and this, and in quietly establishing ourselves upon this Island we have already made Considerable progress in conciliating the people; interchanges of visits and entertainments have taken place,

[1] After his return to the United States Commodore Perry advocated the establishment of a colony at Port Lloyd, "leaving the question of sovereignty to be discussed hereafter", although he said that the "right of sovereignty undoubtedly belongs to Japan, as the earliest known occupant of the islands", adding the obscure remark: "beyond this claim the present settlers have unquestionably priority of right of jurisdiction" (Narrative, I, 212–13, footnote).

[2] This correspondence, of December 22 and 23, 1853, is printed in Narrative, I, 303–6.

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and exhibitions of the Daguerreotype the Magnetic Telegraph, the Submarine armour and other scientific apparatus have been made to the utter astonishment of the people; all these incidents are duly recorded and transmitted to Japan.

Parties from the ships traverse the Island without molestation and are kindly received; and payment is now taken in money for supplies furnished to the Squadron; in truth Lew Chew is a direct and valuable dependency of Japan, and we have even now all the controul over it necessary for our present purposes.

And were it not that the authorities and people are kept in constant dread of the consequences that would be visited upon them by the Government of Japan or rather the Prince of Satsuma to whose province the Lew Chews belong, they would be delighted at our coming amongst them, and this makes it a duty with me to protect them as far as I can against the vindictiveness of their cruel and unnatural rulers; hence I shall keep a ship here whenever one can be spared.

On July 2, 1853, Perry sailed with his squadron of four vessels, the *Susquehanna*, the *Mississippi*, the *Saratoga*, and the *Plymouth*, for his first visit to Japan; the *Supply* remained at Naha to "keep possession of the house at Tumai" which had been assigned to the use of the squadron (Williams, 44; "Tumai", Tomai, or Tomari, was a village adjacent to Naha).

Third Visit to Loochoo

After his first visit to Japan (July 8–17, 1853) Commodore Perry returned to Naha, arriving at that port on July 25. This "third visit" to Loochoo lasted for one week, or until August 1 (see Narrative, I, 274–82, *passim;* Williams, 70–82, *passim*). The squadron was now composed of the *Susquehanna*, the *Mississippi*, the *Plymouth*, which arrived at Naha on July 27 (Williams, 73), and the *Supply*. The *Saratoga* had gone to Shanghai (see Narrative, I, 272).

The demands of Commodore Perry during this third visit were necessarily complied with by Loochoo. This detailed account of the negotiations (if they may properly be so called) is from Narrative, I, 275–82:

The Commodore had no time to spare, as his present visit was intended to be very short, and he was not disposed to be put off for a moment by the usual temporizing policy of the slow-moving Lew Chewans, so he demanded at once an interview with the regent; the demand was immediately granted, and a day appointed for the meeting. Previous, however, to the interview, the Commodore had caused the regent to be made acquainted with the nature of the propositions, upon a favorable concession to which he had resolutely fixed his mind. Commander Adams was commissioned to lay these propositions before the mayor of Napha and some of the authorities, and accordingly went ashore, accompanied by Dr. Williams, the Chinese interpreter, bearing the following instructions from the hands of the Commodore: [1]

> "Establish rate and pay for rent of house for one year. State that I wish a suitable and convenient building for the storage of coal, say to hold six hundred tons. If they have no such building, I desire to employ native workmen to erect one after the fashion of the island; or if the Lew Chewan government prefers, it can be done under the inspection of the mayor, at government expense, and I will agree to pay an annual rent for it. Either one or the other arrangement must be made."
>
> "Speak about the spies, and say if they continue to follow the officers about, it may lead to serious consequences, and perhaps to bloodshed, which I should deplore, as I wish to continue on the most friendly terms with the

[1] This was on July 26.

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authorities. That should any disturbance ensue, it will be the fault of the Lew Chewans, who have no right to set spies upon American citizens who may be pursuing their own lawful business."

"We must have a free trade in the market, and the right to purchase articles for the ships."

"It will be wise, therefore, for the Lew Chewans to abrogate those laws and customs which are not suited to the present age, and which they have no power to enforce, and by a persistence in which they will surely involve themselves in trouble."

"Let the mayor clearly understand that this port is to be one of rendezvous, probably for years, and that the authorities had better come to an understanding at once."

"Thank the mayor for the kind act of the authorities in putting a tombstone over the remains of the boy buried from the Susquehanna, and ask the privilege of paying the cost of the same." [1]

"Require prompt and early replies to all these propositions and demands."

The Commodore, in addition to these instructions by which Commander Adams was to be governed in his interview, sent a formal communication [2] to the regent, in these words:

"*To his Excellency the Tsung-li-kwan of the Kingdom of Lew Chew:*

"SIR: The commander-in-chief of the United States naval forces in the East India, China, and Japan seas, having returned to this port from Japan, is about sailing for China, and before leaving is desirous of communicating to his excellency the Tsung-li-kwan a few observations, having reference to the intercourse of persons under his command with the authorities and people of Lew Chew.

"The commander-in-chief, while he thanks the officers of the Lew Chewan government for the services which they have already rendered in furnishing a few supplies to the ships of the squadron, cannot see the necessity of enforcing against strangers a system of restriction which is altogether at variance with the customs and practices of all civilized nations, and which cannot at the present day be recognized as just or proper.

"The commander-in-chief is especially desirous of remaining on the most friendly terms with the government of Lew Chew, and of contributing all in his power to the prosperity and happiness of the people; and he claims that the officers and men under his command shall be received on the same footing as those who arrive from China and Japan; that they shall have the privilege of purchasing in the market and shops whatever they may need, and for which they will pay the prices demanded by the sellers; that the inhabitants, particularly the women and children, shall not fly from us as if we were their greatest enemies; and, finally, that our officers and men shall not be watched and followed by low officials and spies. He declares that if this system of espionage is persisted in, he will on his return to Lew Chew take the necessary steps to stop it.

"It is repugnant to the American character to submit to such a course of inhospitable discourtesy, and though the citizens of the United States, when abroad, are always regardful of, and obedient to, the laws of the countries in which they may happen to be, provided they are founded upon international courtesy, yet they never can admit the propriety or justice of those of Lew Chew, which bear so injuriously upon the rights and comforts of strangers resorting to the island with the most friendly and peaceful intentions.

"With the highest consideration,

"M. C. PERRY,

"*Commander-in-Chief of the United States Naval Forces,*

"*in the East India, China, and Japan Seas.*"

[1] Payment for the tombstone was declined (see Williams, 71–72).

[2] Presented on July 27 (see Williams, 73).

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Upon Commander Adams laying the propositions of the Commodore before the mayor of Napha, he was told by that official that he could do nothing of his own accord, and was obliged to refer all the demands of the Americans to the Tsung-li-kwan, or regent of Lew Chew, as his own powers were entirely subordinate to those of that high dignitary. Captain Adams then told the mayor that he must inform the regent that the Commodore desired to have an interview with him, either the next day or the day after, at any hour or place he, the regent, might appoint; and, moreover, that his excellency must come prepared to answer, unequivocally and without discussion, the propositions just presented. To this the mayor replied that the regent would be immediately notified, and that the Commodore should be informed as to the time and place of meeting.

Next morning, Lieutenant Contee, the Commodore's aid, was sent ashore to call upon the mayor of Napha, from whom he learned that the regent had appointed the ensuing day, (Friday [*Thursday*], July 28,) and the Kung-qua at Napha, as the time and place for the interview.

Accordingly, on Friday [*Thursday*] the interview came off, and its details are minutely given in the following report, prepared by a subordinate officer appointed for that special service:

"By previous arrangement, two o'clock, p.m., had been fixed upon as the hour for the interview, and the regent had sent word that he would leave Shui at noon. About half-past one, however, a boat came off to the Susquehanna with the Pe-ching, Chang-yüen, on board, to inform the Commodore that everything was in readiness for his reception, and the regent already in waiting. The place selected for the purpose was the Kung-qua of Napha, which is used on all official occasions. The Commodore went ashore at two o'clock, accompanied by Captain Adams, captain of the fleet, Lieutenant Contee, flag lieutenant, Captain Lee, of the Mississippi, Captain Kelly, of the Plymouth, and twelve other officers, making a staff of sixteen persons.

"On landing he was received by a deputation of officers, headed by the Pe-ching, and conducted to the place of reception, which is situated on the main street or road leading from Napha to Shui, and about a quarter of a mile from the beach. It is a small but neat building, surrounded by a high wall, which screens it from all observation from without. The mayor of Napha, with some of his attendant officers, stood at the entrance, and the regent advanced to the door of the enclosure to receive the Commodore. Within the building, tables were already prepared for a collation, similar to that given at Shui by the former regent, though not on so extensive a scale. The feast was arranged in precisely the same manner, the Commodore and Captain Adams occupying the first table on the right hand, while the regent and mayor took that on the left, opposite to him. After tea had been brought, the regent made a complimentary remark to the Commodore, hoping that he had returned in good health. Ichirazichi acted as interpreter, and the conversation was carried on by Mr. Williams, through the medium of the Chinese language.

"The Commodore stated that he would leave in a few days for China, but should return again to Lew Chew in a few months. Before he left, however, he wished to have a settlement of all those matters concerning which he had addressed them. His demands were reasonable and proper, and he expected that they would be complied with. The Americans were persons of few words, but they always meant what they said. The regent answered that his reply would soon be ready, and invited the Commodore, in the meanwhile, to partake of some refreshments. He was answered that we preferred business first and the refreshments afterwards. The requests made were fair and simple, and the Commodore was dissatisfied with any delay in granting them. We had been to Japan, where we had been received in a very friendly manner. We had exchanged presents with Japanese governors, and were on friendly terms with the Japanese. We hoped, now, to be on friendly terms also with the Lew Chewans. Mr. Williams then, at the Commodore's request, gave a brief narration of his reception by the princes of Idzu and Iwami, and of our exploration and survey of the bay of Yedo. The regent observed, in return, that his reply would be very soon delivered.

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"The dinner then commenced, and seven or eight of the twelve courses of soups had been served, when the letter was brought in and given to the regent, who took it, and, accompanied by the mayor and interpreter, advanced to the Commodore's table, where he presented it with every appearance of submission and humility. His demeanor during the dinner was even more constrained and impassive than on the occasion of his dining on board the Susquehanna, previous to our departure for Japan. The letter was enclosed in an envelope, and stamped with the great seal of Lew Chew. Mr. Williams, at the Commodore's order, opened and read it on the spot.

"It commenced by affirming the small size and poverty of the island, stating that Dr. Bettleheim's residence among them had given them much trouble, and that if we should erect a building for coal their difficulties would be greatly increased. Besides, they said, the temple which they had appropriated to our use was thereby rendered useless to them, and their priests were prevented from performing their worship in it. The productions of the island were few, as they derived all of their teas, silks, cloths, and many other articles from Japan and China. With regard to the shops and markets, that was a matter that depended on the people themselves, and if they chose to keep their shops shut, the regent could not interfere. He declared, moreover, that the persons who had followed us whenever we had gone ashore were not spies, but officers appointed to act as guides, and to prevent us from being annoyed by the people. Since we had not found them to be of service, and objected to them, they would be directed not to follow us in future.

"After the letter had been read, the Commodore ordered it to be delivered back to the regent, stating that it was not at all satisfactory, and could not be received. We had asked, he said, for no more than is accorded to us in other countries—for no more than we already had in China, and expected to have in Japan. With regard to the temple, that they had themselves assigned it to our use, as they invariably had done, for those foreigners who had visited them previous to our arrival. We would pay them rent for it, and expected to pay for everything that we obtained. We had travelled over their island, and knew that the soil was rich, the people thrifty, and supplies of all sorts abundant. As we paid for all we received, our presence was an advantage to the people, who found in our vessels a good market for their productions. If they did not wish to erect a building for coal, we would send a vessel with materials, and put it up ourselves. The regent ventured to say that there were some difficult points in the Commodore's communication, and they had much deliberation concerning them, before the reply was written. The Commodore reiterated what he had previously said, that all his demands were plain and simple, and ought to be granted without hesitation. The Lew Chewans should be satisfied, by this time, that we had no intention to injure them. They had not been molested in any way by any of our men, and if they persisted in following us with spies hereafter he would not be answerable for the consequences.

"The regent attempted to come forward and again present the reply; but the Commodore rose and prepared to leave, declaring that if he did not receive satisfactory answers to all his demands by noon the next day, he would land two hundred men, march to Shui, and take possession of the palace there, and would hold it until the matter was settled. With this declaration, he left, the regent attending him to the gateway, where he remained until all the officers had taken their departure. The Commodore returned to the beach, attended by his staff, and immediately went on board the Susquehanna."

It will be observed that the new regent, Shang-Hiung-Hiun, was a great adept in the temporizing policy of his government, and was ever ready with a thousand crooked arguments[1] for not giving a direct answer to a direct demand.

The Commodore, however, was not to be balked of his purpose by any of the shams and devices of Lew Chew policy, and went straight on to the end proposed,

[1] This and some later expressions seem unduly harsh.

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without allowing himself to be diverted from a broad, honest course of fair dealing, into any of the bye-ways of the oriental hide-and-go-seek diplomacy. As to resorting to force, which had been threatened at the close of the conference with the regent, the necessity of violent measures was never seriously contemplated by the Commodore, as it was rightly judged that a resolute attitude would answer all the purpose of a blow. The Commodore, therefore, sent Commanders Adams and Buchanan, accompanied by Dr. Williams, to the mayor of Napha.[1] These gentlemen were instructed to obtain categorical replies to all the demands made upon the regent the previous day. Simultaneously with this mission ashore, an incident occurred, which, however slight in itself, had probably no small effect upon the timid hearts of the Lew Chewans. The Commodore had dispatched his carpenter to look after the sedan chair which had been deposited in the temple at Tumai, since its use on the previous occasion of the grand procession to the palace at Shui. The people of Lew Chew watched, with considerable anxiety, the movements of the carpenter, and their frightened imaginations already, no doubt, fancied the Commodore borne on in his car of state, the aforesaid sedan chair, as a triumphant victor within the walls of their capitol.

Whether this looking after the sedan chair was accidental or not, it happened in the very nick of time, and probably hastened the decision of the Lew Chew authorities. The mayor of Napha was very prompt in complying, to the extent of his authority, with the demands of the Commodore, as urged in his behalf, by his representative Commander Adams, who returned to the ship bearing the message that the regent would be immediately communicated with, and that the Commodore might be assured that a definite answer would be given to his propositions the next day.

Accordingly, at about ten o'clock the following morning,[2] the mayor came on board the Susquehanna, with the information that all the Commodore's propositions had been acceded to, and would be carried out as far as the people could be controlled. He then, in detail, stated the various concessions to which the government had finally yielded. In regard to the coal depot, he said that preparations had already been made for its construction, and that the government had agreed upon the amount of rent, which was to be ten dollars per month. As for access to the market, it having been stated that the difficulty was with the common people, and particularly the women, who were averse to entering into immediate commerce with strangers, a compromise was proposed by the Commodore, and agreed to on the part of the mayor, which was to the effect that a bazaar should be opened in the Kung-qua for the sale of the various products of the country which the Americans might desire to purchase.

The mayor proposed the subsequent Sunday [July 31, 1853] for the opening of the bazaar, when he was told that that was a day kept holy by Christians, when buying and selling were contrary to their religion. It was then proposed, and acceded to, that as the squadron was not to sail until Monday, at nine o'clock, that the market should be opened at six o'clock on the morning of that day.

Although the authorities had soon found that it was necessary to give a favorable answer to the demands of the Commodore, and the mayor of Napha had come on board for the express purpose of giving such an answer, which he accordingly did at once, yet while yielding each point, he still pertinaciously insinuated all sorts of trivial objections to the Commodore's plans. He said that the coal would not be safe on shore, as the natives would probably steal it; in answer to which he was told that the government of Lew Chew would be held responsible for every lump of it. The mayor was then ready with another objection, stating that typhoons blew very severely on the island, and would no doubt sweep away the coal depot; and thus, to the very last, while forced to grant all that was asked, the

[1] This would be on July 29; but no record of a "mission ashore" on that date for the purpose mentioned is to be found in Williams or in National Archives, Log Book, U.S.S. *Susquehanna*.

[2] This was on Friday, July 29 (see Williams, 77–79, and the log book of the *Susquehanna*). According to Williams, the ground for the coal depot was staked and cleared the same afternoon and the plans of the building were shown and explained the next day, Saturday, July 30.

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authorities still clung to their prevaricating policy, as if deceit was so much a part of their nature that they practiced it for its own sake alone.

. . . . . .

In accordance with the arrangements between the Commodore and the authorities of Napha, the bazaar was opened at six o'clock on the morning of the steamer's departure, (Monday, August 1.) The *Kung-qua*, the place selected for the mart, was found duly prepared, with heaps of Lew Chewan productions, a motley assortment of lacquered cups, plates and boxes, pieces of grass-cloth, and the various articles of Lew Chew costume, such as cotton and silk sashes, sandals of straw, and hair pins of brass and silver, fans, chow-chow boxes, which correspond somewhat with our sandwich cases, smoking pipes and a plentiful supply of tobacco. The interpreter, *Ichirazichi*, was the presiding genius, or, rather, roguish Mercury of this market, who went busily about performing his functions as general broker, accompanied by a group of subordinate officials. The various parties from the ships soon commenced a brisk business, and succeeded in spending, in the aggregate, about a hundred dollars. As the demand increased it was found, in accordance with the usual law of trade, that the supply augmented, and the Lew Chew merchants were not backward in illustrating this principle of political economy. The prices were not very heavy at first, but the natives, in the course of the business, began to improve in this particular, and it was found that some from the ships had paid at least double the sum paid by others for a similar article. The objects obtained were of not much importance, but the chief interest of the occasion arose from the fact that this dealing with foreigners was the first authorized, and was in direct opposition to a fundamental law of the island, the abrogation of which cannot but result in the greatest advantage to the people of Lew Chew. The signal of departure being hoisted, the party of purchasers returned to their respective ships, and at 8 o'clock in the morning (August 1) the Commodore started for Hong Kong.

So prompt had been the effect of the Commodore's resolute demands upon the authorities of Lew Chew, that on the day of sailing, the building for the storage of coal, commenced only two days previous, had been framed and reared, and it was learned afterward that it was entirely finished in two days more. The building is 50 by 60 feet in dimensions,[1] with a water-tight thatched roof, with the eaves projecting beyond the sides, which are boarded up more than half the distance from the ground to the roof, leaving an open space sufficient for purposes of ventilation. It was originally of sufficient capacity to hold 500 tons of coal, and the first cargo placed in it was that of the Caprice, which arrived soon after the departure of the Commodore. Subsequently, the Southampton landed her cargo, shipped at Macao, when it was thought advisable to enlarge the depot, and accordingly the authorities added a wing to each side.

The Commodore, conceiving it to be of the highest importance that a ship of the squadron should be stationed almost constantly at Lew Chew, to keep alive the friendly interest and good feeling then subsisting between the Americans and the islanders, who were becoming daily more cordial, he determined to leave the Plymouth, Commander Kelly, there. He, however, instructed this officer to run over to the Bonin islands, after the termination of the hurricane season, for the purpose both of visiting the settlement at Port Lloyd and of surveying the southern cluster of the Bonins, originally called the Coffin islands, after the first American discoverer in 1823, though, as we have stated before, subsequently appropriated and named by the English Captain Beechy, the Baily group.

The instructions [2] of the Commodore to Commander Kelly referred generally to the conciliatory but firm attitude he desired should be sustained in all the relations of the Americans with the Lew Chewans. It was strictly enjoined upon Captain Kelly that he should receive nothing from the islanders without returning a fair compensation, and always bear himself towards them in such manner as to prove that it was the desire of the United States to cultivate their friendship and secure their confidence. The Commodore, in addition to some detailed

[1] According to Williams, 79, the dimensions were 60 by 35 and about 10 feet high.

[2] For some of the instructions to and a report of Commander Kelly, see serial 751, pp. 64–68.

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instructions in regard to the construction of the coal depot and landing the cargoes from the expected storeships, directed that, in his absence, the survey of Melville harbor [1] and the coast of the island should be made, the investigations already commenced in the waters of Napha be continued, and a boat and officer kept in readiness to pilot in any of the American squadron that might arrive.

After his third visit to Loochoo Commodore Perry reported in these concluding paragraphs of his confidential unnumbered despatch of August 3, 1853 (not printed; the remainder of the despatch is quoted in the editorial notes to Document 164):

The Kingdom of Lew Chew is a miniature Japan, its origin being of very early date, as they have a printed chronology of their Kings from the 12th Century to the present day. The Island was formerly governed by three Kings, but for a long period but one has reigned.

The present heir to the throne is a minor of ten years, the Kingdom being ruled by a Regent.

Lew Chew is a dependency of Japan and has also her own tributary Islands, to which she sends Governors and other officials and from which she claims tribute.

The Island of Lew Chew is cultivated to perfection and consequently is abundantly rich in agricultural products.

I have acquired a sufficient control over the councils of the Lew Chewan authorities to induce them to relax in many of their laws which forbids any traffic with foreigners, and to put up a coal shed for the deposit of coals for the Squadron.

These measures have been taken for the reason that the Port is a convenient one, and in the probability that it will become a place of resort to our Ships of War and merchant vessels.

Claim to the Coffin Islands

According to Commodore Perry's despatch No. 20, of September 2, 1853, the *Plymouth*, Commander John Kelly, was left at Loochoo "to sustain the position assumed by me with respect to the Authorities of those Islands, and to look after a small depot of Coal I have established at Napa preparatory to ulterior movements" (serial 751, p. 64); Commander Kelly was ordered to make a cruise to the Bonin Islands during the autumn of his stay, and to leave at Naha, during his absence, an "officer with a boat and boats crew suitably armed and equipped, whose duty it will be to look out for the hired house on shore, the coal sheds, and to board outside and pilot into port such vessels as may appear off the harbour, also to watch and keep the buoys in their proper places" (*ibid.*, 67).

A brief report of Commander Kelly's cruise, giving no dates, is in Narrative, I, 283, where it is said that Commander Kelly, "in accordance with the instructions of Commodore Perry, visited the islands hitherto termed 'Baily's' [the southern group of the Bonin Islands], took formal possession of them in the name of the United States, and gave them their proper name of Coffin, a due record of which was made upon the chart, and upon the spot, by affixing a plate, inscribed

[1] For the location of Port Melville (Unten), see the map entitled "Island of Great Lew-Chew", in Narrative, I, facing p. 186; and compare Hydrographic Office Chart No. 2338. The location is roughly at 26°42′ north latitude and 128° east longitude. A village called Unten lies in that vicinity.

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with the fact, to a large sycamore tree growing about twenty feet from the beach, near the northwest point of the cove, and burying one also, with some documents placed in a bottle, giving a true history of the discovery of the islands, and assigning the credit to the genuine discoverer, the American whaling captain, Coffin".

In *ibid.*, II, 132–33, is the report of Lieutenant George B. Balch, of the *Plymouth*, dated December 6, 1853, of his cruise with a launch and a cutter to the "Baily Group"; that cruise began on October 22, 1853, and was partly for the purpose of seeking a suitable location for a coal depot.

The *Plymouth* left Naha for the Bonin Islands on October 1, 1853; arrived at Port Lloyd October 20; left Port Lloyd October 29; arrived at Newport, Hillsborough Island, in the Coffin or Baily Group, that night; left Newport October 31; and was again at Naha on November 6. On that day the *Vandalia* arrived at Naha to relieve the *Plymouth*; and the latter departed on November 14, arriving at Hong Kong, via the Volcano Islands (to the south of the Bonins), Amoy, and Macau, on December 8 (National Archives, Log Books, U.S.S. *Plymouth* and *Vandalia*).[1]

No mention of the proceedings of Commander Kelly was made by Commodore Perry in his letter of December 23, 1853, to Sir Samuel George Bonham (see Narrative, I, 303–6; also Cholmondeley, *op. cit.*, 102–5).

It was on October 30, 1853, that Commander Kelly took possession of the Coffin Islands "at Newport, Hillsborough Island, by hoisting the United States flag, firing a salute of seventeen guns, and burying a copper plate and a bottle" (Paullin, "Early Voyages of American Naval Vessels to the Orient", 269–70, in 37 United States Naval Institute Proceedings; National Archives, Log Book, U.S.S. *Plymouth*).

The charter of government which the settlers of Peel Island had framed "of their own accord" on August 28, 1853, is printed in Narrative, I, 283–85, footnote. It is said that those articles were drafted by Commodore Perry, were never enforced, and in a few years were forgotten (see Cholmondeley, *op. cit.*, 99, 119).

The claim of American sovereignty over the Coffin Islands made by direction of Commodore Perry was not supported by the Government of the United States. By note of December 17, 1861, the Japanese Government notified Townsend Harris, Minister Resident at Yedo, of its intention to reoccupy the Bonin Islands; the answer

[1] The records of the log books of the *Mississippi*, *Powhatan*, *St. Marys*, *Susquehanna*, and *Vandalia* are by civil time, from midnight to midnight; and this is in accordance with unsigned printed "Directions for Keeping the Log" inside the front covers of certain of the volumes, which specify that "Civil time is to be used". In the cases of the *Plymouth* and *Supply*, however, the records are by nautical time, reckoned from noon of the day preceding the written date of the log record to noon of the day of that date. For example, under date of December 29, 1853, the logs of the *Plymouth* and *Supply* record occurrences between noon of December 28 and noon of December 29. As the record is by watches, usually of four hours each, it is clear what took place before and what took place after midnight. Accordingly, the dates given in these editorial notes represent civil time.

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of Harris (December 19) was to the effect that he would send a copy of the communication to his Government and that in the meantime he reserved "all the rights, that American Citizens may have acquired in the Islands in question"; but the reports of Harris to Secretary of State Seward were not acknowledged or answered (D.S., 3 Despatches, Japan, No. 55, December 20, 1861, and enclosures; No. 3, January 2, 1862, and enclosure). After the return of the Japanese officials sent to the islands, the Japanese Government (July 26, 1862) informed Robert H. Pruyn, Minister Resident at Yedo, that two American citizens, Nathaniel Savory and William Allen, the latter a native of Bremen, Germany, were residing on one of the islands and communicated Regulations and Harbor Regulations which had been drawn up. Pruyn (August 14, 1862) objected to some of the latter as well as to certain official acts, reserved "in express terms the question of Sovereignty", and reported to Secretary of State Seward (D.S., 4 Despatches, Japan, No. 39, August 15, 1862, and enclosures); but Seward did no more than acknowledge the despatch and write that a definitive answer (which was never sent) could not be given until he had had an opportunity to confer with Senator Ira Harris, of New York (D.S., 1 Instructions, Japan, 78, December 2, 1862).[1]

No relevant correspondence between the two Governments of later date than 1862 has been noticed; but on April 21, 1873, this despatch was written by Charles E. De Long, Minister at Tokyo (D.S., 23 Despatches, Japan, No. 380):

> I have the honor to advise you that this morning I was called upon by one Captain Benjamin Pease, who stated to me that he was an American citizen resident at the Bonin Islands where he had resided for the last three years.
>
> That he had come to me at the request of a large portion of the residents of that group to find out under what governmental protection the residents of that group of Islands were, if under any whatever.
>
> In answer to my farther enquiries he informed me that the group of islands commonly known and called the Bonin group is composed of three large islands named, Parry, Bonin and Baily and of a large number of unnamed smaller islands.
>
> That one Captain Beachy of HBM's Ship of war Blossom took formal possession of the Bonin group in 1828, by planting a post on the land with a copper plate on it engraved on which is the claim of the British Authorities to the island
>
> That at the time Commodore Perry visited Japan and entered into a treaty with this people his fleet rendezvoused for a period at this group at which time an American naval officer commander of the Ship Plymouth of that squadron took formal possession in the name of the United States government of Baily Island by hoisting an American flag thereon and saluting it. That the post and plate of the British and the flag of the American officer are still there. That nine years ago the Japanese Government under the Tycoon sent an officer with some sixty families to the group and took formal possession in the name of Japan. That this officer took such lands as he desired from the foreign residents giving them deeds leases &c for the residue. That he summoned all of the foreign residents and required them to sign a letter to the Tycoon thanking him for the privilege of residing there which they did. That this rule lasted for about fourteen months when all of the Japanese were recalled and none have since been there.
>
> That on Bonin Island there is Twenty five American residents seventeen British Do. Four French Do and a number of Hawaiians making in all sixty

[1] The Japanese occupation of 1861 continued only until 1863, but was permanently resumed on November 24, 1875; and it appears that on neither occasion was any objection thereto made by the British Government (see Cholmondeley, *op. cit.*, 118–21, 164–67).

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eight, that on Parry Island there is one American and one Hawaiian resident and on Baily Island one American and one native of the Gilbert Islands.

That the group has an area of about one hundred and fifty square miles. The climate being very fine and the soil wonderfully productive being specialy well adapted to the raising of stock of all kinds. The fisheries abundant and the harbor of Port Loyd as fine and commodious as any in the world having an inner harbor so secure that whale ships have frequently been hove up there and repaired

That there is about Twenty Six children between the ages of five and sixteen living there wholly uneducated as no one can be induced to locate there and teach as the country is governed wholly by lynch law.

That frequent disputes arise and no means of obtaining any redress for wrongs exist. That the harbor of port Loyd is about four hundred and eighty miles from Yokohama and about five hundred from Kobe thus it is situated nearer to this than any other open port in Japan. Captain Pease farther stated that the Japanese Commission when there formally declared the whole group open to foreign settlement and trade. That he (Captain Pease) was now about to proceed to Hawaii to send out a large stock of cattle but in common with the other residents wished before embarking in any extensive business arrangements to learn what laws they were subject to

In reply I have advised the Captain that I would at once submit this enquiry to you for instruction; requesting to know if the United States government asserted any jurisdiction over or claim to the islands and if not if I should recognize the Japanese jurisdiction (if still asserted) and if so whether I should appoint Captain Pease or some other resident American Consular Agent for the United States.

I therefore respectfully submit this statement to you for your instructions in the premises.

Secretary of State Fish responded to the foregoing despatch by this instruction of May 31, 1873 (D.S., 2 Instructions, Japan, 84–85):

Your despatch N° 380 of the 21st ultimo, relative to the Bonin Islands, has been received. It has been ascertained that one, at least, of the vessels composing Commodore Perry's expedition to Japan did visit those Islands and that the Commander took possession of them on behalf of the United States. This step, however, has never been expressly sanctioned by Congress, and we are not aware that any other act of the Government has since taken place which would show a disposition to support the claim of the Naval officer adverted to. If citizens of the United States have repaired to those Islands for the purpose of taking up their abode, this has been done without any promise, express or implied, that this Government would protect them in their pursuits. By resorting to such remote spots on the globe's surface under such circumstances, they may fairly be held to have deliberately abandoned the United States without a purpose of returning, and therefore to have relinquished the rights as well as the duties of citizens

Fourth Visit to Loochoo

The next stay of Commodore Perry at Loochoo immediately preceded the negotiations in Japan which resulted in the signing of the treaty of March 31, 1854 (Document 164). This, the "fourth visit", was from January 21 to February 7, 1854. During this period payment of $110 was made (January 30) to the authorities of Loochoo, $90 for the cost of the coal shed and $20 for the rent of the house or hospital at Tomari for six months to March 1 (Williams, 90–91); there was a written communication from Commodore Perry to the Regent of Loochoo (delivered February 1) dealing, it seems, with trivialities, which was duly answered the next day by a "promise to order the people not to run away, to supply all the provisions sent for and to act with truthfulness" (*ibid.*, 91–94); another unwelcome visit at the

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royal palace was made on February 3, on which occasion, as before, neither the Queen Dowager[1] nor the young Prince was seen (*ibid.*, 94–95; Narrative, I, 309–10); there were further explorations (see *ibid.*, 311–19); and when the Loochoo authorities alleged inability to supply Commodore Perry with Japanese coins to the value of $50 left with them for that purpose, the latter refused to receive back the American money and ordered some presents from the Regent to be returned (see *ibid.*, 310; Williams, 96, the latter including an acid comment).

Of more importance is the fact that, before leaving Naha, Commodore Perry "issued a proclamation to the effect that as a question was pending between the United States and Japan touching certain demands upon the Japanese government, and as it was deemed essential to the security of the just claims of the United States to assume, during the pending negotiations, limited authority on the island of Great Lew Chew, he had, therefore, detached from the squadron two master's mates and about fifteen men to look after the United States government property and other interests during his absence" (Narrative, I, 323–24).

The explanation for that proclamation (the text whereof is not available) is to be found in Perry's despatch No. 39, dated at Naha January 25, 1854; from that despatch, which is printed in full in the editorial notes to Document 164, with the answer thereto of the Secretary of the Navy, dated May 30, 1854, one paragraph is here quoted (see serial 751, pp. 108–13):

> To this end, it is my intention should the Japanese Government refuse to negotiate or to assign a Port of resort for our Merchant and Whaling Ships, to take under the *surveillance* of the American Flag upon the *ground of reclamation for insults and injuries committed upon American Citizens*, this Island of Great Lew Chew, a dependency of the Empire, to be held under such *restraint*, until the decision of my Government shall be known, whether to avow or disavow my acts. Until such action is had the responsibility will rest solely upon me, and I shall assume it as a measure of political precaution, for it is certain that if I do not take preliminary steps before leaving this Port for Yedo, for adopting such course, the Russian, or French, or probably the English will anticipate the design.

The "preliminary steps" of the despatch were presumably the proclamation and the action therein recited. In the despatches of Commodore Perry no mention of the proclamation is made. In his No. 40, of February 2, 1854, he thus reported (serial 751, pp. 141–43):

> I may remark that since the date of my despatch Nº 39 I have induced the authorities of Lew Chew to take rent for the House occupied by us in the Town as a Hospital, and for other purposes, and to transfer for a small sum to the Navy Department the right of property in the coal shed put up by them near the landing for the accommodation of the Squadron.
>
> These are unprecedented concessions and I trust will lead to others still more important; the survey of the shores and ports of the Island have been completed two harbors hitherto unknown to strangers have been discovered; the interior of the Island has been explored and having received some intimation that coal

[1] Who died soon afterwards (see Williams, 252).

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is to be found about forty miles from hence I have despatched a party to examine the locality.

I am constantly obtaining information confirmatory of the opinion that Lew Chew Mēyacosima and the Ohosima Islands are all dependencies of Japan.

. . . . . .

I shall leave a party at Lew Chew to look after our coal depot here, and hope to sail with the three steamers in four days from hence.

Observations of Commodore Perry

While on his way to Japan, Commodore Perry made observations of some of the islands lying north of Naha and wrote his despatch No. 41, dated at sea February 9, 1854, which follows in part (serial 751, pp. 113–15):

"Oho-Sima" is the principal of what I shall call the Northern Group of the Lew-Chew Chain, which in connection with the "Mijako-Simas", and another Chain commencing with the "Cleopatra Islets," extend from near the North end of Formosa to Kiu-Siu. The South Western extremity of Japan proper.[1]

The positions[2] of the "Cleopatra Isles", and "Oho-Sima" as established by cross bearings taken from the "Susquehanna" at noon on the 8th of February, 1854. after good observations, were as follows:

South end of "Cleopatra Isles"—Lat. 38°.48′ N.
" " " " Long 128°.59′.30″ E.
North end of "Oho-Sima"—Lat. 28°.29′. N.
" " " " Long. 129°.30′ E.

The "Mijako-Sima" Islands have been more than once visited by Foreign Vessels, and more recently by the "Saratoga" of this Squadron, whose Officers describe the inhabitants as being in language, manners, customs and appearance almost identical with those of Great Lew Chew, and if we are to judge by what we have seen of this Island we may suppose the entire Chain (those I mean capable of sustaining a population) to have been peopled many hundreds of Years.

We know that the "Mijako-Sima" Group are governed by Officers appointed by the King and Council of Great Lew-Chew, and that they are frequently changed in conformity with the insiduous and jealous policy practised throughout Japan and its dependencies. We also know that these Islands are subject to Lew-Chew, to the government of which they pay an annual tax, and we are moreover told that Lew-Chew is a Royal fief of the Empire of Japan, though it is asserted by some writers, that it owes fealty only to the Prince of Satsuma.

With regard to the people and Government of "Oho-Sima" and the neighboring and probably dependent Islands[3] of "Tok-Sima" "Ratona-Sima" and "Kikai-Sima", we as yet know but little, but it is fair to assume that they are also subject to Great Lew-Chew, and the Government of the latter exercises an inter-

[1] Compare Hydrographic Office Charts Nos. 2194 and 5306 with the map entitled "Great Lew Chew and its dependencies" in Narrative, I, facing p. 151. "Oho-Sima" is Amami O Shima; the "Mijako-Simas" (Miyako Retto) are within the southern of the three groups of the Loochoo Islands; but the whole southern group was sometimes referred to as the "Mijako-Sima Group"; the "Cleopatra Islets" are Yokoate Shima.

[2] The positions given are fairly accurate; but the point on "Oho-Sima" which was sighted was one which from the westward (see serial 751, p. 168) appeared to be, but was not, the "North end"; and 38° is a misprint for 28°.

[3] Tokuno Shima, Kakeroma Shima, and Kikai Shima, all of the northern group of the Loochoo Islands (cf. Hydrographic Office Chart No. 2194 and Von Siebold, Nippon, Archiv zur Beschreibung von Japan und dessen Neben- und Schutzländern, pt. 7, "Beschreibung der Liukiu-Inseln", pp. 281–82; Neudruck, pp. 1323–24).

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mediate Sovereignty between them and the Empire, or possibly the Prince of Satsuma.

From what Von Siebold asserts, it seems pretty clear that this Prince receives at least, the income derived from the Lew-Chew Islands, which he says amounts to the Annual Sum of 2,240,000 Guilders, nearly $900,000.[1]

He also sustains the opinion to which I have been irresistably led, that the three Groups of "Mijako-Sima", Great Lew Chew, or (Okinawa-Sima) and "Oho-Sima", should be denominated the Southern, Middle & Northern Lew-Chew Islands, the Central Government being established at the City of Shui, in the Island of Great Lew-Chew.[2]

The geographical positions of these Islands forming as before mentioned a continuous Chain from Formosa to Japan proper, would seem to be so arranged to suit the convenience of the commerce of the Unskilful Japanese, who sail in their frail, open sterned vessels, from Island to Island, always being careful to have a Port under their Lee, into which to escape on the approach of foul weather.

"Oho-Sima" to which this communication should more particularly refer, is in circumference nearly 150 English miles. It is mountainous, resembling indeed the appearance of Lew-Chew.

It is represented by Von Siebold and other writers to be thickly populated, having all the advantages of Cities, Towns, Villages, and Commodious Ports, and the wonder is that it has never, as far as we can learn, yet been visited by a Christian voyager. *I may hope to have that satisfaction,* and to be able to communicate to the Department farther information with respect to these interesting Islands.

The recorded history of Great Lew-Chew goes back to the 12th Century, when its line of Kings became allied by marriage with the Japanese dynasty. Ruins of extensive and massive Castles are still found in the Island; the one occupied by the present Royal Family is in good repair, and in Architectural proportions, extent, strength and massiveness of structure, is quite equal to many of those reared in Europe in the early and middle Ages.

The Roads and Bridges throughout the Island are of admirable structure, all giving indication of great antiquity. Many of the roads are paved with square blocks like those in the Ancient Cities of Italy, and are shaded by avenues of Pines and other forest trees.

The remains of fortified works, apparently intended for defence of the Port of Napa, go to show that in the art of Engineering the people were not deficient, and though these works are no longer armed, they could still be made available.

To each of the principal towns belongs a commodious building called in the Lew-Chew language Cung-qua, and similar in object to the Caravansaries of the East. These are constructed and kept in repair at the public expense, and here travellers can always find shelter and refreshment. It was to these public Inns that the Officers of the Squadron in prosecuting their explorations in the Interior of the Island were conducted by their Guides, and where they invariably found hospitable entertainment.

A Treaty Port in Loochoo

The signing of the treaty of March 31, 1854, with Japan (Document 164) rendered unnecessary the proposed "surveillance" in respect of Loochoo; but it was part of the policy of Commodore Perry to have Naha as a treaty port; he had sought to include Naha (in addition to Shimoda and Hakodate) in the clauses of the treaty with Japan; the

[1] Von Siebold, *op. cit.*, pt. 1, "Anmerkungen", p. 170 (Neudruck, p. 222). In *ibid.*, pt. 6, "Vom Japanischen Handel", p. 56 (Neudruck, p. 1008), and pt. 7, "Beschreibung der Liukiu-Inseln", p. 296 (Neudruck, p. 1338), the figure given is 2,400,000 guilders; but those pages of Von Siebold's work were not published until later than the date of Perry's despatch.

[2] Von Siebold, *op. cit.*, pt. 1, "Erklaerung der Karten", pp. 209–17 (Neudruck, pp. 261–69), *passim;* and see *ibid.*, pt. 7, "Beschreibung der Liukiu-Inseln", pp. 279–83 (Neudruck, pp. 1321–25).

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Japanese Plenipotentiaries had declined to accede to this; so an agreement with the Government of Loochoo became essential if the desire for three treaty ports was to be fully realized. The making of such an agreement was the chief object of the final stay of Commodore Perry at Naha (July 1–17, 1854).

The Japanese proposals of March 15, 1854, had been first presented in Chinese and then (on March 17) in Netherlandish; relying, it seems, chiefly on the latter (which is not available), Commodore Perry gives the clause (sixth proposition) relating to Loochoo as reading: "Lew-Chew is a very distant Country, and the opening of its harbor cannot be discussed by us" (see the editorial notes to Document 164, pp. 621–22); but Williams' translation of the passage from the Chinese (Article 6) is: "As Loochoo is a distant frontier dependency, the matter of opening a port there cannot at this time be caviled at by us"; and he says specifically that the phrase concerning "trade at Napa" is: "We cannot now cavil at it" (see Williams, 137–39, including the Chinese).

The rendering given by Perry of the sixth proposition or article, and not the translation of Williams, is to be taken as substantially correct. The question of the accuracy of the translation made by Williams has been examined by Mr. Willys R. Peck, Counselor of Embassy at Nanking, who writes to the editor as follows (June 6, 1938):

> You asked me to look into the matter of the accuracy of the English translation of the Chinese version of a Japanese tentative draft of a treaty between the United States and Japan, as given on pages 137–39 of the Transactions of the Asiatic Society of Japan, volume 37. The document in question is reproduced in the English and Chinese languages (but not the Japanese language) in "A Journal of the Perry Expedition to Japan", by S. Wells Williams.
>
> Since the document must have been written originally in Japanese, an inspection of the Japanese text would have afforded great assistance in resolving the point at issue. Unfortunately, there is available no copy in Japanese of this tentative draft. Moreover, the treaty with Japan of March 31, 1854, does not contain the expression most in doubt, that is, "cavil at".
>
> I had a special reason for wishing to compare the Japanese and Chinese texts of the draft treaty, the reason being that the word translated by Williams "cavil at" appears to be a misprint in the Chinese text. The Chinese word used is *pien*, 辨, which means "discriminate, distinguish between"; another word of exactly the same sound, but written differently, i.e., 辯, means "discuss, argue"- This second word is often used in the sense of "cavil at", as in our common expression, "All right, I won't argue the point". Hence, I am inclined to think that Williams either mistook the Chinese word in the text for the word meaning "discuss", or else carelessly overlooked the use of the wrong word in the Chinese text. I feel pretty sure in my own mind that the original Japanese word should have been represented by the Chinese word meaning "argue" or "discuss".
>
> It seems fairly clear, therefore, that the Chinese word in question should have been the one meaning "discuss or argue about", instead of the one meaning "discriminate". Williams and I seem to agree about this, but while I can agree with him that "discuss or argue about" carries the implication of "to dispute" and hence "to cavil at", it seems to me that the more neutral meaning "discuss" is the sense in which this Chinese word is used in this document, rather than "cavil at". Chinese usage and the context of Articles VI and VII makes "discuss" rather than "cavil at" the logical rendering.
>
> It does not seem probable that the Japanese would have regarded the remoteness of the Loochoo Islands as a reason for opening a new port there, but quite

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the contrary. Moreover, Article I contains a promise to open "another port", singular number; why, then, should the Japanese in Articles VI and VII say that they would not "cavil at" the opening of two additional ports at Loochoo and Matsumai? In Article VII it is expressly pointed out that Matsumai is not only a distant place, like Loochoo, but is ruled by a hereditary prince; it is clear that this fact was adduced as another reason why the matter of a port at Matsumai could not be discussed by the central authorities for the time being; it was the evident intention to consult the hereditary prince first and then discuss the matter at due leisure the following spring.

Incidentally, the Chinese word *hsu*, 徐, translated "leisurely", seems to me quite possibly another misprint; it seems to me that this *hsu* is mistakenly used instead of *hsu*, 須, meaning "must". If this is so, then the Japanese were merely giving a positive assurance that the matter of a port would be discussed the following spring at Nagasaki. While the implication is that the discussion was intended to result in the opening of a port, I cannot agree that Williams was justified in his translation "discussed and arranged", since this constitutes a promise in advance, a thing which it was the clear intention of the Japanese draft to avoid.

There are places in Articles I to V, inclusive, in which I would not have made exactly Williams' translation, but they are not important. I give below my translation of Articles VI and VII, based on the assumption that the word *pien* is a misprint in two places and the word *hsu* in one place.

Substitute Translation

ARTICLE VI. As Loochoo is a distant region on the frontier, the matter of opening a port there is not one that can be discussed at this time.

ARTICLE VII. Matsumai, also, is a place on the distant frontier; moreover, there is at that place a hereditary prince; consequently, in this case as well, the proposal to open a port is not one that can be discussed immediately; the matter should be discussed during the coming spring, when your ships arrive at Nagasaki.

Also to be mentioned is the translation (editorial notes to Document 164, pp. 623–24) of the Japanese "statement of their understanding of the verbal Agreements" of the conference of March 17, 1854, which contains the clause: "Lew-Chew is a very distant Country, and a definite answer cannot be given"; of the same conference Williams writes: "they can say nothing regarding Lewchew; this, therefore, seems to settle the question respecting the political independency of that island as of Yedo, whatever may be its relations with Satzuma" (Williams, 140–41).

FINAL VISIT TO LOOCHOO

For this "fifth visit" the squadron was composed of three vessels; the *Lexington* had come on to Naha from Shimoda in May;[1] and Commodore Perry arrived with the *Mississippi* and the *Powhatan* on July 1, 1854 (see Narrative, I, 490–92).[2]

[1] The *Lexington* left Shimoda on May 4 (Williams, 180).

[2] In the meantime the *Macedonian*, Captain Joel Abbot, had made a brief cruise to the Bonin Islands, remaining at Port Lloyd from April 20 to 28, 1854 (see Narrative, II, 127–30). Regarding this cruise Dr. Williams wrote (May 2, 1854, at Shimoda; Williams, 178–79):

> The "Macedonian" came in from the Bonin Islands this evening, having been three days in returning from Port Lloyd, where she left an anchor

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During June a seaman of the *Lexington* had died, apparently from native attack under circumstances of great provocation; after a judicial proceeding, the affair was closed to the satisfaction of Commodore Perry (see Narrative, I, 492–94; serial 751, p. 169; Williams, 228–44, *passim*). There were further but unsuccessful requests for Japanese coins (Williams, 251); a stone was obtained for the Washington Monument (*ibid.*); there was entertaining on both sides (see *ibid.*, 245; Narrative, I, 496–97); Commodore Perry, "with the aid and approval of the Lew Chew authorities, [employed] native lighters to transport to the steamers all the coal remaining in the coal-shed at Tumai; and causing the building itself to be put in order, left it in charge of the native authorities, with an assurance that they would look carefully to its preservation for future use, and the reception of any deposit of coal the United States might wish to make there in time to come" (*ibid.*, 495); and there was a settlement of accounts, from the report of which (Williams, 250–51) these lines are excerpted:

> Their bill [for loading coal, etc.] of $129 we reduced to $100, and that of $41 we cut down to $12, since, as it cost only $58 to build the whole shed at first, $12 was plenty for thatching two wings and mending two ends. The Regent was admonished to keep it in order, and a flag was given him to hoist at the depot whenever an American ship came into the harbor, as well as a small one to take off to ships in the Roads when the pilot goes to conduct them in.

But the important business was the compact. A brief account of the discussions is in Narrative, I, 495; fuller reports (with more accurate dates) are by Dr. Williams, who was one of the two American negotiators, the other being Flag Lieutenant Silas Bent; the Plenipotentiaries of Loochoo were the Regent and the Chief Treasurer;[1] there was an American draft of six articles, with a preamble; this is not available; but most of the differences between that project and the final text are disclosed; the preamble of the draft and its words in favor of "western nations" were omitted; the second phrase of paragraph 4 was new; and the final clause was recast. These excerpts are from Williams, 235–45:

> [*July 5.*] We left the draft of a treaty in their hands, consisting of six broad articles, which Perry intends to get the Regent to sign as a pact between the two nations. Some of its provisions extend over others, as well as all Americans.
>
> [*July 7.*] Respecting the articles of the treaty, the Regent requested time to confer with the other Treasurers, and they would be ready to discuss the paper to-morrow and settle all its points. This was agreed to, and a meeting between the principals arranged for Monday [July 10].

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and brought threescore turtles—all there were to be had. The population has decreased since last year, and the United States consul [this means John Smith] left there by Perry has gone off in search of better quarters, making thereby a good move. All the stock left there has disappeared, nor have the seeds come to maturity, and, except the turtles and potatoes brought away, there is little new or interesting added to our present stock of information or stores.

[1] There were three Treasurers.

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[*July 8.*] At the meeting this afternoon we discussed the various points of the treaty, they having carefully looked the document over. To our surprise, the greatest objection they made was to the preamble, in which it was stated that Lewchew and the United States entered into a treaty of amity, saying that this would offend the Chinese emperor, to whom they gave their allegiance, and who would visit his wrath upon them if they assumed an independent position, as this preamble asserted. In reference to Tuchara or Japan, they said that the trade with Satsuma was carried on mainly for the purpose of procuring rare and fine articles to carry with them to China when they took tribute to Peking. They wished to say nothing respecting the latter trade and evaded a reply when I asked them if they did not take tribute to Kagosima also. The admission of being tributary to China seemed to please them, rather than be a humiliation, and the real fealty they are in to Satsuma must be a sore subject and a grievous burden, or it would hardly be so mortifying to them to say aught respecting it. Of course, if they are willing to promise all we want it is likely to be held fully as binding to give the assurance in their own style. They tried, too, to get all the trade into the hands of the officials by making it the duty of the captain of the ship to furnish a list of what he wanted, but this was refused, though we altered the clause[1] which they so interpreted as to oblige them to buy as well as sell.

They defined illegal acts, for which all citizens of the United States can be seized and taken to their captain, as including "rushing or intruding into houses, ravishing women, forcing people to sell things to them at their price, and going about streets at night," from which I infer that these acts have been the chief obnoxious doings of the Americans whilst here. We assented to this addition except the last clause.

Finally, as Commodore Perry had stipulated these liberties for all Americans, English, French, and other Western nations, they supposed he had authority on these points, and they wished to have him carry Mr. Moreton[2] and family away when he left. As the inference was a fair conclusion from the premise, we did not reply, otherwise than by promising to mention the matter to Perry; and such was their readiness to catch at even this slight but fallacious prospect, that both the Regent and Treasurer rose to return their profound thanks. This incident proves the wisdom of the Commodore last January when he declined to give Moreton a passage in one of the ships. . . .

We declined to take their version off to the Commodore, but waited for them to make a draft of the corrected copy.

[*July 10.*] As we landed this morning, the birds and plants presented to the Commodore were going aboard, and when we reached the town-hall there were the Regent and Treasurer, as if they had been sitting there since we left them on Saturday night. We discussed the various points of the treaty, to most of which they agreed, but made more objection to the conclusion, desiring to have it read that as the Commodore ordered these various points, they humbly consented to allow them; but, as this arrangement was inadmissible, they at last agreed to express it that they consented to it, he signing it first, and they affixing a seal only to authenticate it and avouch their willingness. Fear of China was the only reason they assigned. It was a singular discussion; we desiring to have them sign this document on terms of equality as a sovereign state, and they debating every inch, preferring to own subjection to China and great inferiority to us. They wished us, too, to express, instead of "western nations", the names of England and France, which we could not do, since that would offend them and be invidious to others, and therefore took it all out, which made it unnecessary to say anything further concerning Mr. Moreton, about whose removal they gave us a long paper.[3] . . . When we returned on board, Perry was passably satisfied with our report. . . .

[1] Paragraph 2.

[2] G. H. Moreton was the missionary who replaced Dr. Bettelheim in Loochoo; the latter left with the squadron (Williams, 248; D.S., Miscellaneous Letters, Perry to Secretary of State Cass, July 3, 1857).

[3] This partial translation of that paper, dated July 10, 1854, is from Narrative, I, 498, footnote:

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[*July 11.*] The various agricultural implements intended for the Lewchewans went ashore this morning, and all were arranged in good order in full time to present to the Regent. There was only time to prepare four copies of the treaty in English and Chinese. . . .

At noon the band and marines landed at Junk Harbor jetty and marched in martial array up through the market to the main street and then down to the landing place near Capstan Rock, affording an unexpected treat to the townsfolk and market women. At the landing the Commodore met the body and was escorted to the town hall where the Regent and Treasurer had made every preparation for receiving him in style, spreading an awning, setting out tables, and cleaning up the yard. . . .

All parties being seated, the list of presents for the Regent and three Treasurers was presented. To the first, a revolver and flask of powder, engraving of the Washington Monument, and all the agricultural implements; the first Treasurer, a dressing table and engraving; the second and third Treasurers, each a lorgnette and engraving; besides fifteen pieces cottons to the old woman aggrieved and assaulted. The copies of the treaty were then signed by Perry and sealed by the Regent, each party taking two.[1] . . .

We remained about three hours, partaking of all the dishes and enjoying a cool breeze, and left them, they pleased that they had got the Commodore's promise to ask the Governor of Hongkong or England on his return there to send and remove Moreton from the island, and he more delighted at having got the big bell,[2] now at Bettelheim's house, though he had failed in obtaining any coins. The Regent, besides the bell, sent a pretty present to Perry of two bullocks, paper, pipes, cups, jar, cloth and other produce of the country. Altogether, this last interview with the officials was unusually agreeable to all present.

A prepared statement. Sho Fu-fing, General Superintendent of Affairs in the Kingdom of Loochoo, and Ba Rio-si, Treasurer at Shuri, earnestly beg Your Excellency's kind consideration of some circumstances; and that, to show compassion on our little country, you will take away back to their own land Bettelheim and Moreton, who have remained here long. . . .

In the years 1844 and 1846 some French officers came, and the Englishman Bettelheim also brought hither his wife and children to reside, and they all required something to be daily given them, to our continual annoyance and trouble. Whenever an English or French ship came in, we earnestly represented these circumstances to them and besought them to take these people away with them. The Frenchmen, knowing our distresses, went away in the year 1848 to their own country and have not hitherto returned; but Bettelheim has loitered away years here and not gone, and now, further, has brought Moreton, with his family, to take his place and live here, greatly to the discomfort of the people and distress and inconvenience of the country.

We have learned that Your Excellency has authority over all the East Indian, China, and Japan seas, and not a ship of any western country can go from one of these seas to the other but that you know and regulate its movements. Wherefore we lay before you our sad condition in all its particulars, humbly beseeching your kind regard upon it and requesting that, when your fine ships return, you will take both Bettelheim and Moreton away with you. This will solace and raise us up from our low condition and oblige us in a way not easy to be expressed. We wish your life may be prolonged to a thousand autumns, in the enjoyment of the highest felicity.

Mr. Moreton and his family left Naha about two years later, when the mission was abandoned (Williams, 255, footnote).

[1] This is incorrect; Commodore Perry took three of the four originals; see his despatch No. 63 to the Secretary of the Navy, dated September 5, 1854 (printed above).

[2] That bell, in accordance with the wish of Commodore Perry, was presented in 1858 to the United States Naval Academy, where it now hangs, in a framework of oriental design, just off "Lover's Lane" in the Naval Academy grounds (letter of the Superintendent of the Naval Academy, April 4, 1940; cf. Williams, 246, footnote).

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On July 17, 1854, Commodore Perry left Loochoo with the *Mississippi* and the *Powhatan*, the *Lexington* having sailed for Hong Kong two days earlier; Naha ceased to be a port of rendezvous for the American squadron and "was left to the quiet in which it reposed when our ships first anchored [on May 26, 1853] in its waters" (Narrative, I, 497).

Just after his departure Commodore Perry wrote from the *Mississippi* two despatches relating to Loochoo and the compact; it is to be noted that his views of the sovereignty [1] had (doubtless because of his negotiations with Japan) been somewhat modified, as he now deemed Loochoo "in a measure an independent sovereignty"; relevant excerpts from those two despatches follow (serial 751, pp. 168–70):

[*No. 53, July 18, 1854*]

On our way to Japan in February last the Squadron passed to the Westward of the Island OhoSima, in returning I was desirous of examining its Eastern Shores.

This we have done, and made such reconnaissance of the outline of the Coast as time and circumstances would permit; I had intended to have anchored the Ships and Communicated freely with the people, but I could discover no convenient anchoring places, and was therefore content to send a couple of boats from the Mississippi in charge of Lieutenants Maury and Webb, if for nothing more than to say, that the Americans had had communication with a land never before visited by a Christian person.

The reports of these Officers represent the people as very similar to those of Lew Chew, but of less thrifty appearance.

The opinions expressed in my despatch Nº 41 [quoted in part above] have been Confirmed by subsequent observations, and Lew Chew it appears, is in a measure an independent sovereignty, holding only slight allegiance either to Japan or China, but preferring rather its relationship to the latter Empire; that the Islands stretching from Formosa to Kiu Siu are all [2] under its sovereignty, and are in such intercourse with the parent Island Great Lew Chew, as the imperfect character of their means of navigation will allow.

[*No. 54, July 19, 1854*]

native lighters were employed in taking to the Steamers all the Coal remaining in the Coal Shed, which as belonging to the United States I caused to be put in order, and left in charge of the local authorities, being well assured, that it will be carefully looked after, and kept in readiness for the reception of coal, should it be determined to make any further deposits at this place.

I also entered into a Compact with the Royal authorities, which binds the Government and people of Lew Chew to treat with kindness and friendship all Americans visiting the Ports of the Island; to supply them with whatever they may need, and to succor and protect all shipwrecked persons, who may be thrown ashore upon any part of the Kingdom; to establish pilots &c; see accompanying paper D [3]

The original of this Compact will be forwarded to the Department, with other similar papers, when a safe private Conveyance may offer.

Having completed all my business at this place, and entertaining for the last time the High authorities of Lew Chew on board the Mississippi, I left Napa on

[1] For views of Commodore Perry subsequently expressed, maintaining that the United States might properly make treaties with the native princes of Borneo and Sumatra and with Formosa, see Narrative, II, 173–82, especially pp. 173–74.

[2] This is not to be taken literally, for "all" would include islands adjacent to Kyushu; the meaning intended is doubtless all three groups of the Loochoo Islands.

[3] This is a print of the English version of the compact headed "Japan Expedition Press. U.S. Steam Frigate Mississippi, at Sea, July 17th, 1854".

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the morning of the 17th inst in company with the Powhatan, the Lexington having sailed two days before for Hong Kong.

The Powhatan was on the same day despatched for Ning-po-Fou, Fuh-chow-fuh and Amoy on the Coast of China, to inquire into the interests of Americans, resident at those places, and from Amoy to proceed to Hong Kong.

I had intended to have accompanied her with the Mississippi, but in consideration of the long interval of time since we have received communications from Washington, and being aware of the existence of war in Europe, on further reflected I thought it more advisable to proceed at once to Hong Kong, where I hope to arrive in two or three days.

Thus, Sir, I have finished the work assigned to me with respect to Japan, and I trust that on my arrival in China, I may find letters from the Department authorizing my return to the United States, a relief made the more necessary to me for reason of continued ill health, and consequent debility.

Duration of the Compact

In 1869 the territorial rights of the daimios were surrendered to the Emperor of Japan (see Gubbins, *op. cit.*, 13–15, 191–211); included in the cession were the rights of the Prince or Lord of Satsuma over Loochoo; in 1872 the Government of Japan asserted sovereignty over Loochoo and, by note of November 5, 1872, declared that as Loochoo was "an integral portion of the Japanese Empire it is natural that the provisions of a compact entered into between the Lew Chew and the United States on the 11th of July, 1854, will be observed by this government" (Foreign Relations, 1873, pt. 1, 555);[1] this course was acquiesced in by the United States; in an instruction of December 18, 1872, to Charles E. De Long, Minister at Tokyo, Secretary of State Fish wrote (D.S., 2 Instructions, Japan, 32–33; see Foreign Relations, 1873, pt. 1, 553–55, 564):

I am in the receipt of your Nº 302, dated the 6th day of November.

You state that the Kingdom of Lew Chew has become formally incorporated into the Japanese Empire, the King reduced to the condition of an Ex-Daimio and assigned a residence in Yedo which he has accepted. That you had called the attention of the Japanese Government to the compact of July 1854, between the United States and Lew Chew and had inquired if that compact would be respected and observed by the Japanese Government within the former territorial limits of Lew Chew, and had obtained from the Japanese Government a declaration that they will be observed.

Your action in this matter is approved. It is supposed that the absorption or incorporation of one State by another does not discharge or release within the limits of the absorbed or incorporated State the obligation which it may be under to a third power at the time of such absorption or incorporation.[2]

Perhaps the correspondence of 1872 was overlooked; copies of despatches of April 8 and May 30, 1875, with the enclosure to the former, from Benjamin P. Avery, Minister to China (printed in Foreign Relations, 1875, pt. 1, 313–16, 331–32), were sent to John A. Bingham, successor to De Long as Minister to Japan, with an instruction wherein Secretary of State Fish wrote (D.S., 2 Instructions, Japan, 274–75, July 29, 1875):

[1] It appears that treaty obligations of Loochoo to other Governments were similarly assumed by Japan at this time (see Chamberlain, *op. cit.*, 314–15).

[2] With this generalization compare the American note of June 25, 1897, printed in Moore, Digest, V, 348–50.

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A compact was concluded between the United States and the Royal Government of Lew Chew on the 11th June [*July*] 1854 (to which you are referred) granting certain privileges to American citizens and vessels going to the Lew Chew Islands. . . .

You will examine into the question and, in the event of any consolidation of those Islands by Japan, see to it that our compact be preserved, unless it should be found more advantageous to this country to apply the treaty with Japan, or such part as may be applicable to the territory referred to.

Bingham reported by his despatch of June 5, 1876, enclosing copies of his correspondence with the Japanese Minister of Foreign Affairs, Terashima Munenori (D.S., 32 Despatches, Japan, No. 409, and enclosures), who wrote under date of May 31, 1876:

I have the honor to acknowledge receipt of your Excellency's communication dated the 4th April 1876 in which your Excellency inquires by instruction of your Government whether new conditions were entered into during the last and the present year between our government and that of Lew Chew Islands and, if so, whether anything has been done which changes in any wise the subsisting compact between your government and the Lew-Chew Han which was concluded on the 11th of December [*July*] 1854.

I beg leave in reply to inform Your Excellency that Lew Chew was made a Han under the Japanese Government in the 9th month of the 5th year Meiji (Sep. 1872). Since the 7th year Meiji (1874) some officials of the Naimusho (Interior Department.) reside there who are authorized to manage all the matters which concern foreign countries, in the same year a mail steamer began to ply between Tokio and that Han. In the next 8th year Meiji (1875) an information was made to that Han that a military Station will be established there for its protection. I also beg to state that an information will be made to you whenever we have any thing which would necessarily cause changes in the compact existing between your government and the Lew Chew Han as further changes are intended to be made in that Han.

This Government has not at any time interfered with the rights of the United States as secured by its subsisting compact with the Lew Chew Islands and before taking such action this Government will confer with the Government of the United States.

An instruction to Bingham of October 9, 1878, included these passages (D.S., 2 Instructions, Japan, 455–58; see also the memorandum of Alvey A. Adee, then Chief of the Diplomatic Bureau, dated October 5, 1878, in 38 Despatches, Japan, with No. 844, of September 2, 1878):

This declaration [the quoted note of May 31, 1876] of the Minister of Foreign Affairs does not appear to be inconsistent either with the stipulations of the instrument above referred to or with any information hitherto communicated to this Department.

With reference to the compulsory orders that all business in Lew Chew should be transacted with the Japanese Department of Foreign Affairs and other similar mandates to which you refer, it appears that these orders which were issued several years since but only recently came to your notice, formed part of a series of measures adopted by the Japanese government in the exercise of its asserted control over the Lew Chew Islands and do not appear to militate with treaty stipulations with this government any more than similar acts heretofore reported.

The killing of some natives of Loochoo by savages of Formosa in December 1871 was followed in 1874 by a Japanese punitive expedition to that island; and while China protested, the dispute between China and Japan was adjusted by an agreement signed at

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Tientsin October 31, 1874, wherein the murdered Loochooans were referred to as "subjects of Japan" (see Leavenworth, "History of the Loochoo Islands", 114–18); there were later discussions between China and Japan regarding Loochoo (see *ibid.*, 118–19; Treat, Diplomatic Relations between the United States and Japan, I, 568–69; II, 71–74, 98–104, 126–27, 141–44, 166, footnote, 179–80; Dennett, Americans in Eastern Asia, 443–46; Moore, International Arbitrations, V, 5046–48); but Japanese control and sovereignty were not thereby or otherwise limited or affected.

While the question seems not to have arisen, it is at least arguable that the convention between the United States and Japan of May 17, 1880 (22 Statutes at Large, 815–16), for mutual reimbursement of shipwreck expenses, rendered superfluous and null the third paragraph of the Loochoo compact; some other provisions of the compact would nowadays be deemed factually obsolete; the question of continued existence of special obligations of Japan under the Loochoo compact must be considered in the light of the treaty of November 22, 1894, between the United States and Japan (29 *ibid.*, 848–54); in that treaty the Loochoo compact is not mentioned *eo nomine;* but the treaty of 1894, which came fully into force on July 17, 1899, was a revision of treaties "hitherto existing", upon the basis of "principles of equity and mutual benefit", and was of general applicability to territories of the contracting parties.

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Treaty Series No. 125
10 Statutes at Large, 1103-4
18 *ibid.*, pt. 2, Public Treaties, 333

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GREAT BRITAIN : JULY 17, 1854

Convention Extending the Duration of the Commission under the Convention of February 8, 1853 (Document 157), signed at Washington July 17, 1854. Original in English.
Submitted to the Senate July 21, 1854. (Message of July 17, 1854.) Resolution of advice and consent July 21, 1854. Ratified by the United States July 24, 1854. Ratified by Great Britain August 8, 1854. Ratifications exchanged at London August 18, 1854. Proclaimed September 11, 1854.

Whereas a Convention [1] was concluded on the 8th day of February, 1853, between the United States of America and Her Britannic Majesty, for the settlement of outstanding claims, by a Mixed Commission, limited to endure for twelve months from the day of the first meeting of the Commissioners: And whereas doubts have arisen as to the practicability of the business of the said Commission being concluded within the period assigned, the President of the United States and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland are desirous that the time originally fixed for the duration of the Commission should be extended, and to this end have named Plenipotentiaries to agree upon the best mode of effecting this object, that is to say: the President of the United States, the Honorable William L. Marcy, Secretary of State of the United States; and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Fiennes Crampton, Esqre, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary at Washington, who have agreed as follows:

Article I.

The High Contracting Parties agree that the time limited in the Convention above referred to for the termination of the Commission shall be extended for a period not exceeding four months from the 15th of September next, should such extension be deemed necessary by the Commissioners, or the Umpire, in case of their disagreement.

[1] Document 157.

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It being agreed that nothing contained in this Article shall in anywise alter or extend the time originally fixed in the said Convention for the presentation of claims to the Commissioners.

ARTICLE II.

The present Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible within four months from the date thereof.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington, the seventeenth day of July, in the year of our Lord one thousand eight hundred and fifty-four.

[Seal] W. L. MARCY.
[Seal] JOHN. F. CRAMPTON.

NOTES

The file papers are in customary form, and no more than enumeration is needed; apart from the signed original of the convention, they are the attested Senate resolution of July 21, the duplicate United States instrument of ratification of July 24, the British instrument of ratification of August 8, the certificate of the exchange of ratifications at London on August 18, and the original proclamation of September 11, 1854.

There is no reference to full powers, *eo nomine*, in the convention, although the word "Plenipotentiaries" is used; in the other records available there is no mention of full powers; and there is no reason for thinking that any were issued.

The Commissioners under the claims convention of February 8, 1853 (Document 157), were, by Article 3 thereof, bound to decide upon every claim before them "within One Year from the day of their first meeting", which took place on September 15, 1853. In June [1] 1854 the Commissioners wrote the following letter to James Buchanan, American Minister at London, and a letter in the same sense to the British Secretary of State for Foreign Affairs, the Earl of Clarendon (D.S., Record of Proceedings under the Convention of February 8th 1853 between the United States and Great Britain, 335–38):

OFFICE OF THE COMMISSION OF CLAIMS
9 Lancaster place June 1854

SIR, As Commissioners under the Convention of February 1853 for settling outstanding Claims between Great Britain and the United States we have the honor to address your Excellency in reference to the duration of the Commission.

By that Convention the Commissioners are bound "to examine and decide "upon every Claim that may be preferred or laid before them within one year "from the day of their first Meeting" And it is further stipulated that the

[1] Not earlier than June 12.

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Claimants shall have six months and, under some circumstances, nine months from that day within which to present their Claims.

The Commissioners met on the 15th of September last and the effect of the time granted by the Convention to the Claimants within which to present their Claims, has been practically in a great majority of cases to postpone such presentment to the last moment and in some cases the Claimants have been unable as yet to complete and present their testimony. Under these circumstances the year within which the Commissioners are to decide upon the Claims is practically reduced to a few months and as it may be necessary to call in the assistance of the Umpire, in some of the Cases (a necessity which the Commissioners trust will not often arise) they feel that it will be impossible for the Umpire to devote the necessary time to such referred Claims prior to the close of the Commission.

By the provisions of the Convention all Claims arising since 1814 not presented to the Commissioners and allowed by them are to be finally barred. For this reason the Agents for the Governments have adopted the course of presenting all Claims on the files of either Government since that time and though very many of these Claims are of a character that have not been urged by either Government and will be disallowed yet they all require an Examination and decision—while some of the Claims in controversy involve principles requiring much labour and investigation. One hundred and twenty cases have been already presented and amongst them are several Claims made on behalf of a great number of Individuals so that in fact that number will be the least which the Commissioners will be called upon to decide.

In view therefore of the uncertainty of being able to complete the business of the Commission within the time limited and having regard in such case to the necessity of the contracting parties entering into a new Treaty for the purpose of continuing the Commission, a proceeding which will require the ratification of the Senate of the United States before the close of its present Session the Commissioners respectfully submit to your consideration the expediency of extending the time for the close of the Commission for some brief period and would express their belief that an extension for the term of four months from the 15th of September next would be sufficient for this purpose.

With this view and in order more fully to express their meaning the Commissioners enclose a Draft of such a Convention as in their Judgment would effect the object proposed, and they have forwarded a Copy of the same to the Earl of Clarendon Her Majesty's Secretary of State for Foreign Affairs with a Counterpart of this Letter to your Excellency with an expression of a hope that it may be made at an early day a matter of conference between the two Governments.

With sentiments of the highest consideration and respect.

We are, Your Excellency's Obedient Servants,

N. G. UPHAM
United States Commissioner
EDMUND HORNBY
British Commissioner

To His Excellency JAMES BUCHANAN
United States Minister to Great Britain &c &c &c

In his despatch transmitting a copy of the foregoing and of the draft therewith, Buchanan wrote (D.S., 66 Despatches, Great Britain, No. 35, June 23, 1854):

Upon a consultation with Lord Clarendon on this subject, we arrived at the conclusion that, in view of the great number of Cases before the Commission it would be a wise precaution to extend the period for six instead of four months, though it is proper to observe that Judge Upham, the American Commissioner, who is very anxious to return home, still believes it possible to close the business of the Commission on the 15th January 1855. Notwithstanding this opinion, however, I respectfully suggest, as my deliberate judgment, that the Commission should be extended until the 15th March.

Lord Clarendon will immediately transmit to Mr Crampton, a Communication similar to this, so that the Article may be concluded between him and your-

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self, should you deem this advisable, and be submitted to the Senate before its adjournment.

Under your instructions of the 2nd July last, I was directed to advise with the Commissioner and Agent, on the part of the United States, in regard to the performance of their duties. This has brought me into frequent official Communication with both these gentlemen; and I am very happy to be able to state, that so far as I can judge, they have discharged their duties with industry, fidelity and ability. It has been no fault of theirs that it is now manifestly impossible to terminate the business of the Commission on 15th September.

The despatch just quoted was received at the Department of State on July 8; nine days later this extension convention was signed by Secretary of State Marcy and the British Minister at Washington, John Fiennes Crampton; the draft of the Commissioners was taken as the model of the text.

The convention was sent to the Senate with the presidential message of July 17, 1854, the date of signature; that message was read in the Senate on July 21; and a resolution of advice and consent was at once adopted, without reference to committee (Executive Journal, IX, 362, 363).

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Treaty Series No. 300
10 Statutes at Large, 1105-7
18 *ibid.*, pt. 2, Public Treaties, 670-71

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RUSSIA : JULY 22, 1854

Convention Regarding the Rights of Neutrals at Sea, signed at Washington July 22, 1854. Original in English and French. Submitted to the Senate July 25, 1854. (Message of July 24, 1854.) Resolution of advice and consent July 25, 1854. Ratified by the United States August 12, 1854. Ratified by Russia September 15, 1854 (September 3, Old Style). Ratifications exchanged at Washington October 31, 1854. Proclaimed November 1, 1854.

The United States of America and His Majesty the Emperor of all the Russias, equally animated with a desire to maintain, and to preserve from all harm, the relations of good understanding which have at all times so happily subsisted between themselves, as also between the inhabitants of their respective States, have mutually agreed to perpetuate, by means of a formal convention, the principles of the right of neutrals at sea, which they recognise as indispensable conditions of all freedom of navigation and maritime trade. For this purpose, the President of the United States has conferred full powers on William L. Marcy, Secretary of State of the United States; and His Majesty the Emperor of all the Russias has conferred like powers on Mr Edward de Stoeckl, Counsellor of State, Knight of the Orders of Ste Anne, of the 2^d^ Class, of St Stanislas, of the 4th Class, and of the Iron

Les Etats-Unis d'Amerique et Sa Majesté l'Empereur de toutes les Russies animés d'un égal desir de maintenir et de préserver de toute atteinte les rapports de bonne intelligence qui ont de tout temps si heureusement subsisté entre eux-mêmes, comme entre les habitans de leurs Etats respectifs, ont résolu d'un commun accord de consacrer, par une convention formelle, les principes du droit des neutres sur mer qu'ils reconnaissent pour conditions indispensables de toute liberté de navigation et de commerce maritime. À cet effet, le Président des Etats Unis a muni de ses pleins pouvoirs le Sr William L. Marcy, Secretaire d'Etat des Etats-Unis; et Sa Majesté l'Empereur de toutes les Russies a muni des mêmes pouvoirs le Sr Edouard de Stoeckl, Conseiller d'Etat, Chevalier des Ordres de Ste Anne de la 2me Classe, de St Stanislas de la 4me Classe, et de la Couronne de fer

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Crown of Austria, of the 3d Class, His Majesty's Chargé d'Affaires near the Government of the United States of America: and said Plenipotentiaries, after having exchanged their full powers, found in good and due form, have concluded and signed the following articles:

ARTICLE I.

The two High Contracting Parties recognise as permanent and immutable the following principles, to wit:

1st That free ships make free goods—that is to say, that the effects or goods belonging to subjects or citizens of a Power or State at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

2d That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband of war. They engage to apply these principles to the commerce and navigation of all such powers and States as shall consent to adopt them on their part as permanent and immutable.

ARTICLE II.

The two High Contracting Parties reserve themselves to come to

d'Autriche de la 3me Classe, Chargé d'Affaires de Sa Majesté près du Gouvernement des Etats-Unis d'Amérique: lesquels Plenipotentiaires, après avoir échangé leurs pleins pouvoirs, trouvés en bonne et due forme, ont arrêté et signé les Articles suivans:

ARTICLE I.

Les deux Hautes Parties Contractantes reconnaissent comme permanent et immuable le principe qui suit,[1] savoir:

1° Que le pavillon couvre la marchandise, (that free ships make free goods,) c'est à dire que les effets ou marchandises, qui sont la propriété des sujets ou citoyens d'une Puissance où Etat en guerre, sont exempts de capture ou confiscation sur les vaisseaux neutres, à l'exception des objets contrebande de guerre.

2° Que la propriété neutre, à bord d'un navire ennemi, n'est pas sujette à confiscation, à moins qu'elles[2] ne soit contrabande de guerre. Elles s'engagent à appliquer ces principes au commerce et à la navigation de toute Puissances et Etats qui voudront les adopter de leur coté comme permanents et immuables.

ARTICLE II.

Les deux Hautes Parties Contractantes se réservent de s'en-

[1] These words should be in the plural: "permanents et immuables les principes qui suivent"; but the Russian instrument of ratification has the singular here in both versions. Cf. the plural in the final sentence of this article.

[2] Properly the singular, "elle".

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an ulterior understanding as circumstances may require, with regard to the application and extension to be given, if there be any cause for it, to the principles laid down in the 1st Article. But they declare from this time that they will take the stipulations contained in said Article 1., as a rule, whenever it shall become a question, to judge of the rights of neutrality.

ARTICLE III.

It is agreed by the High Contracting Parties that all Nations which shall or may consent to accede to the rules of the first Article of this convention, by a formal declaration stipulating to observe them, shall enjoy the rights resulting from such accession as they shall be enjoyed and observed by the two Powers signing this convention. They shall mutually communicate to each other the results of the steps which may be taken on the subject.

ARTICLE IV.

The present convention shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of said States, and by His Majesty the Emperor of all the Russias, and the ratifications of the same shall

tendre ultérieusement [1] selon que les circonstances pourront l'exiger, sur l'application et l'extension à donner, s'il y a lieu, aux principes convenus à l'Article 1. Mais elles declarent dès a présent qu'elles prendront les stipulations que renferme le dit Article 1, pour règle, toutes les fois qu'il s'agira d'apprécier les droits de neutralité.

ARTICLE III.

Il est convenu entre les Hautes Parties Contractantes que toutes les nations qui voudraient consentir à acceder aux régles contenues dans l'Article 1er de cette convention par une declaration formelle stipulant qu'elles s'engagent à les observer, jouiront des droits résultant de cette accession comme les deux Puissances signataires de cette convention jouiront de ces droits et les observeront. Elles se communiqueront réciproquement le résultat des demarches qui seront faites à ce sujet.

ARTICLE IV.

La présente convention serà approuvée et ratifiée par le Président des Etats-Unis d'Amérique, par et avec l'avis et le consentement du Sénat des dits Etats, et par Sa Majesté l'Empereur de toutes les Russies, et les ratifications, en seront echangées à

[1] A slip in the spelling.

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be exchanged at Washington within the period of ten months, counting from this day, or sooner, if possible.

In faith whereof, the respective Plenipotentiaries have signed the present convention, in duplicate, and thereto affixed the seal of their arms.

Done at Washington the twenty-second day of July, the year of grace 1854.

[Seal] W. L. MARCY.
[Seal] EDOUARD STOECKL

Washington dans l'espace de dix mois, à compter de ce jour, ou plus tôt, si faire se peut.

En foi de quoi les Plenipotentiaires respectifs ont signé la presente convention en duplicata, et y ont apposé le cachet de leurs armes.

Fait à Washington le vingt-deuxième de Juillet, l'an de grace 1854.

[Seal] W. L. MARCY.
[Seal] EDOUARD STOECKL.

NOTES

Unless otherwise stated, dates in the headnote and in these notes are in the New Style, or present calendar, which was then twelve days later than the Old Style. It is to be remembered that the difference of dates does not involve a difference of days of the week, which were the same under the two calendars for any given day.

THE FILE PAPERS

The papers in the treaty file include the signed original of the convention (wherein the English version is written in the left columns), the attested resolution of the Senate of July 25, the duplicate United States instrument of ratification of August 12, the certificate of the exchange of ratifications at Washington on October 31, and the original proclamation of November 1, 1854. The Russian instrument of ratification, the seal appendant being now lacking, is dated at Peterhof September 3, 1854 (Old Style), and is accompanied by a certified French translation; it includes the text of the convention in both versions, the French being in the left columns; and therein the *alternat* is carefully observed throughout.

The certificate of exchange was signed only in English; the example in the Russian archives is like that in the treaty file, except in respect of the *alternat* (State Archive of Foreign Policy, Moscow, despatch No. 66, November 6, 1854, file K.168, No. 2476, enclosure; verified copy with despatch No. 1298, from Moscow, of May 24, 1938; D.S., file 026 Treaties/2145). It is said in the cited despatch that President Pierce called at the office of Secretary of State Marcy just after the signing of the act of exchange and spoke of the high importance of the convention and its contribution to the friendship of the two countries.

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The Full Powers

The full power to Secretary of State Marcy was issued the day before the signature of the convention, in this customary form (D.S., 4 Credences, 67):

Franklin Pierce, President of the United States of America.

To all to whom these presents shall come, Greeting!

Know Ye, That, for the purpose of confirming between the Government of the United States and the Government of His Majesty the Emperor of all the Russias perfect harmony and good correspondence, and reposing special trust and confidence in the integrity, prudence, and ability of William L. Marcy, Secretary of State of the United States, I have invested him with full and all manner of power, for and in the name of the United States, to meet and confer with any person or persons duly authorized by the Russian Government, being furnished with like power and authority, and with him or them to agree, treat, consult, and negotiate of and concerning the rights of neutrals, and of all matters and subjects connected therewith, and to conclude and sign a treaty or treaties, convention or conventions touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate thereof, if such advice and consent be given.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand at the city of Washington, (L.S.) the 21st day of July A.D. 1854, and of the Independence of the United States the seventy-ninth.

Franklin Pierce.

By the President,
W. L. Marcy,
Secretary of State.

A certified French translation of the full power of the Russian Plenipotentiary is in D.S., Ceremonial Letters, Russia, 1811–65, reading as follows (translation); the date, May 11, 1854, is Old Style, or May 23, 1854, by the present calendar:

We, Nicholas I, by the Grace of God Emperor and Autocrat of All the Russias, of Moscow, Kiev, Vladimir, Novgorod, Czar of Kazan, Czar of Astrakhan, Czar of Poland, Czar of Siberia, Czar of Tauric Chersonesus, Sovereign of Pskov, and Grand Duke of Smolensk, of Lithuania, Volhynia, Podolia, and of Finland, Prince of Estonia, of Livonia, of Kurland and Semigallia, of Samogitia, Byelostok, Carelia, Tver, Yugoria, Perm, Vyatka, Bulgaria, and of others; Sovereign and Grand Duke of Lower Novgorod, of Chernigov, Ryazan, Polotsk, Rostov, Yaroslav, Byelozersk, Udoria, Obdorsk, Condinia, Vitebsk, Mstislav, Ruler of all the northland, Sovereign of Iveria, of Cartalinia, of Georgia, of Kabarda, and of the region of Armenia; Hereditary Sovereign and Suzerain of the Princes of Circassia, Gorsky, and others; Successor to Norway, Duke of Schleswig-Holstein, of Stormarn, of Ditmarsen, and of Oldenburg, etc., etc., etc., make known by these presents that, having resolved, with one accord with the Government of the United States of America, to fix in a formal act the principles of the right of neutrals at sea that We recognize as conditions necessary to the freedom of their navigation and their maritime commerce, We have chosen and named to that end, as by these presents We do choose and name as Our Plenipotentiary, Our trusty and beloved the Honorable Edouard de Stoeckl, Counselor of State and Our Chargé d'Affaires near the Government of the United States of America, Chevalier of the Orders of St. Anne of the second class, of St. Stanislaus of the fourth class, and of the Iron Crown of Austria of the third class, authorizing him to enter into *pourparlers* with the person or persons who shall be furnished to that end with full powers by the Government of the United States of America, and to conclude such convention as will best fulfil the purpose that We, conjointly with

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the Government of the United States of America, have in view; promising, on Our Imperial word, to find good and approve all that shall be agreed upon, concluded, and signed by him in virtue of the present full power and to bestow thereon Our Imperial ratification. In faith whereof we have signed the present full power with Our own hand and have caused to be apposed thereon the seal of Our Empire. Given at St. Petersburg the eleventh of May of the year of grace one thousand eight hundred and fifty-four and of Our reign the twenty-ninth.

The original is signed by the hand of His Majesty the Emperor himself, thus: "NICHOLAS".
[Seal]
Countersigned: The Chancellor of the Empire, COUNT DE NESSELRODE.
True translation: The COUNT DE NESSELRODE

THE NEGOTIATIONS

On October 4, 1853, Turkey issued a declaration of war with Russia (42 British and Foreign State Papers, 1321–26). The probability that France and Great Britain would enter the conflict on the side of Turkey soon became obvious. The neutral policy of Sweden and Norway and of Denmark in the event of a maritime war was declared on January 2, 1854 (44 *ibid.*, 94–97). Diplomatic relations between Great Britain and Russia and between France and Russia were suspended early in February (*ibid.*, 98–105); and a treaty between Great Britain, France, and Turkey regarding military aid to be given to the last-named power was signed at Constantinople on March 12, 1854 (*ibid.*, 5–8). The outbreak of war was announced to Parliament by Queen Victoria on March 27 (*ibid.*, 110).

The policy adopted by the two powers in respect of neutral commerce during the Crimean War was set forth in the British declaration of March 28 and the similar French declaration of March 29, 1854 (46 *ibid.*, 36–37, 243–44). There had been previous discussion of the subject at London between Lord Clarendon, Secretary of State for Foreign Affairs, and James Buchanan, American Minister, and also at Paris between the Minister of Foreign Affairs, Drouyn de Lhuys, and John Y. Mason, American Minister; some reports of such conversations are printed in *ibid.*, 826–32. On March 16 a draft of the British declaration, which had "not yet undergone the last revision of the Cabinet", was read to Buchanan by Clarendon (*ibid.*, 828–29); and the despatch of Buchanan of March 17 reporting that interview was received at the Department of State on April 1, 1854 (D.S., 65 Despatches, Great Britain, No. 25). Official communication of the policy of the Allied Governments was made at Washington on April 21 and 28 (D.S., 31 Notes from the British Legation; 16 Notes from the French Legation); with the British note of April 21 is a printed copy of the British declaration, as follows:

DECLARATION

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland having been compelled to take up arms in support of an Ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

To preserve the commerce of neutrals from all unnecessary obstruction, Her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to Her by the law of nations.

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It is impossible for Her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing neutrals from bearing the enemy's despatches: and she must maintain the right of a belligerent to prevent neutrals from breaking any effective blockade which may be established with an adequate force against the enemy's forts, harbours, or coasts.

But Her Majesty will waive the right of seizing enemy's property laden on board a neutral vessel, unless it be contraband of war.

It is not Her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships, and Her Majesty further declares, that being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organized forces of the country, it is not her present intention to issue letters of marque for the commissioning of privateers.

Westminster, March 28, 1854.

The response of Marcy was dated April 28, 1854; to the British Minister, John Fiennes Twistleton Crampton, he wrote in these terms (this note is sometimes called the "first Marcy note"; D.S., 7 Notes to the British Legation, 418–21; the note of the same date to the French Minister, Comte de Sartiges, is of the same wording, *mutatis mutandis;* D.S., 6 Notes to the French Legation, 233–35):

The Undersigned, Secretary of State of the United States, has had the honor to receive the note of Mr. Crampton Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary of the 21st instant, accompanied by the declaration of Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, in regard to the rule which will, for the present, be observed towards those powers with which she is at peace, in the existing war with Russia.

The Undersigned has submitted those communications to the President, and received his direction to express to Her Majesty's Government his satisfaction that the principle that free ships make free goods, which the United States have so long and strenuously contended for as a neutral right, and in which some of the leading Powers of Europe have concurred, is to have a qualified sanction by the practical observance of it in the present war by both Great Britain and France—two of the most powerful nations of Europe.

Notwithstanding the sincere gratification which Her Majesty's declaration has given to the President, it would have been enhanced if the rule alluded to had been announced as one which would be observed not only in the present, but in every future, war in which Great Britain shall be a party. The unconditional sanction of this rule by the British and French Governments, together with the practical observance of it in the present war, would cause it to be henceforth recognised throughout the civilized world as a general principle of international law. This Government, from its very commencement, has labored for its recognition as a neutral right. It has incorporated it in many of its treaties with Foreign Powers. France, Russia, Prussia, and other nations have, in various ways, fully concurred with the United States in regarding it as a sound and salutary principle, in all respects proper to be incorporated into the law of nations.

The same consideration which has induced Her Britannic Majesty, in concurrence with His Majesty the Emperor of the French, to present it as a concession in the present war,—the desire to "preserve the commerce of neutrals from all unnecessary obstruction"—will, it is presumed, have equal weight with the belligerents in any future war, and satisfy them that the claims of the principal maritime powers, while neutral, to have it recognised as a rule of international law are well founded, and should be no longer contested.

To settle the principle that free ships make free goods except articles of contraband of war, and to prevent it from being called again in question from any quarter or under any circumstances, the United States are desirous to unite with other powers in a declaration that it shall be observed by each hereafter, as a rule of international law.

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The exemption of the property of neutrals, not contraband, from seizure and confiscation when laden on board of an enemy's vessel, is a right now generally recognized by the law of nations. The President is pleased to perceive from the declaration of Her Britannic Majesty that the course to be pursued by her cruisers will not bring it into question in the present war.

The Undersigned is directed by the President to state to Her Britannic Majesty's Minister near this Government that the United States, while claiming the full enjoyment of their rights as a neutral Power, will observe the strictest neutrality towards each and all the belligerents. The laws of this country impose severe restrictions not only upon its own citizens but upon all persons who may be residents within any of the United States territories against equipping privateers, receiving commissions, or enlisting men therein, for the purpose of taking a part in any foreign war. It is not apprehended that there will be any attempt to violate these laws; but should the just expectation of the President be disappointed, he will not fail in his duty to use the power with which he is invested to enforce obedience to them. Considerations of interest and the obligations of duty alike give assurance that the citizens of the United States will in no way compromit the neutrality of their country, by participating in the contest in which the principal Powers of Europe are now unhappily engaged.

That some months earlier Marcy had proposed that the rule of "free ships, free goods" be written in a treaty with France, is shown by these paragraphs of a letter from him to Mason at Paris, of April 17, 1854 (Library of Congress, 49 Marcy Papers, 43925–26):

I have endeavoured for some time to find leisure to write a private note to you, but till now I have not been able to do so. News has just reached us of the actual existance of War between G Britain and France as Allies of Turkey on the one side and Russia on the other. The United States have two things to do, or rather one thing to do, and, another not to do. We must take care of Neutral rights, and not get envolved in the conflict.

I understand that both England & France have agreed to act upon the favorite doctrine of the U.S. that Free Ships make Free Goods. Before you left home the Compte de Sartiges and myself had in hand the Negotiation of a treaty. The *projet* submitted to him contained this principle and I did not understand that there would be any objection to it on the part of France.[1]

It was in a Treaty [2] made by Napoleon I^st^ with the U.S. I supposed that would be an additional reason for the present Emperor to favor it. Great Britain has yielded it for the present War. Russia has always favored it. I now hope henceforth it will be regarded as a rule, in the International Code.

On April 14, 1854, Secretary of State Marcy wrote the following note to Edouard de Stoeckl, Russian Chargé d'Affaires (and subsequently Envoy Extraordinary and Minister Plenipotentiary) at Washington (D.S., 6 Notes to the Russian Legation, 53–55):

The Undersigned Secretary of State of the United States, in addressing Mr. de Stoeckl at this time thinks that there can be no doubt that Great Britain and France have become parties to the existing war between Russia and Turkey. A war in which maritime powers are engaged necessarily affects in some respects favorably and in others injuriously the commerce of neutrals. This country having altogether the most extended foreign trade of any nation which will remain neutral in the approaching conflict among the principal powers of Europe, is deeply interested in the policy which is likely to be pursued by the belligerents

[1] No copy of that project or other record of the negotiation mentioned has been found in the archives of the Department of State.

[2] The reference is to Article 14 of the convention of September 30, 1800 (Document 25); but in Article 15 of that convention there was the rule of "enemy ships, enemy goods".

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towards neutral commerce. In the general wars which have heretofore taken place in Europe, nations not involved in them have had just cause to complain of the invasion of their well established rights and the practical assertion of novel principles of international law harrassing to their trade and ruinous to the interests of their merchants.

The Undersigned has good reason to believe that Great Britain and France have had the subject of neutral rights under consideration, and in respect to them have determined to adopt in the impending war with Russia a more liberal policy than has been hitherto observed by belligerents. Russia has always been foremost among the maritime European Powers to respect neutral rights, and this government does not entertain a doubt that she will in the present conflict maintain the liberal spirit which has hitherto distinguished her conduct towards neutral powers. In the earliest period of this republic attempts were made to procure the recognition of the doctrine that "Free ships make free goods" as a principle of international law; but those attempts were unavailing, and up to this time enemies' property on board of a neutral vessel has been held liable to seizure and confiscation. Russia has the merit of having favored the liberal view of this question; France has been willing to concede the doctrine, but Great Britain strenuously resisted. Her maritime ascendency has inclined her to maintain extreme doctrines in regard to belligerent rights. It may now be regarded as a settled principle of maritime law that a neutral flag does not protect all the property under it. Notwithstanding this rule it is now quite certain that both Great Britain and France in the war in which they are likely to be engaged will consent to refrain from the seizure of any property which may be found under the flag of a neutral nation except articles that are contraband of war. They will also respect the property if not contraband, of a neutral owner found on board of an enemy's ship. This however is no concession to neutrals for the international code protects their property thus situated.

The Government of the United States does not doubt that the Emperor of Russia will act upon the same principles and in due time apprize neutral powers of his determination to do so. The application of this principle that free ships make free goods, to a single war and as a mere relaxation of an admitted belligerent right does not fulfil the expectations of this government. It claims the principle as belonging to the international code and wishes to have it recognized by all nations and observed in all future wars. In the efforts of the United States to accomplish this object they hope for the powerful coöperation of the Emperor of Russia.

The United States have heretofore contended for the relaxation of other severe rules enforced by belligerents contrary to the law of nations against neutral commerce. They have asserted the right of Neutrals to carry on the coasting and colonial trade of a belligerent which has opened to them this trade even after the commencement of hostilities. How far such a right, if now claimed by neutrals, would be resisted by the belligerents in the war now apprehended is not known. Upon this subject the Undersigned does not propose to enlarge at this time, and perhaps there may be no occasion to define the extent of neutral rights in this respect. Should the Emperor of Russia open the coasting trade in his dominions to ships of all nations not at war with him, a grave question would then arise as to the right of his enemies to interfere with neutrals in carrying it on at Russian ports not actually besieged or blockaded.

To neutral nations and especially to the United States as the principal among them, the views of Russia on the subjects above alluded to will be most desirable and important information in the event of a war in which Great Britain & France shall be involved. The United States while disposed to respect the acknowledged rights of belligerents will assert the rights of neutrals and resist all encroachments upon them.

Stoeckl responded on the day following that he would lay the note of Marcy before the Imperial Government and would communicate to the Secretary of State the relevant directions received (D.S., 4 Notes from the Russian Legation, April 15, 1854).

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Despatches of Stoeckl to Count Nesselrode, Russian Minister of Foreign Affairs, were written on April 20; in one of them, with which was transmitted the original of Marcy's note of April 14 (printed above), Stoeckl reported three conversations had with Marcy. In the first of these, about April 6, Marcy is thus quoted (State Archive of Foreign Policy, Moscow, despatch No. 14, file K.167, No. 1092; verified copy with despatch No. 1298, from Moscow, of May 24, 1938; D.S., file 026 Treaties/2145; translation from the French):

Some time ago we directed our Minister at London to request explanations from the British Government regarding its understanding of the rights of neutrals, and we told him to declare to the Ministers of the Queen that we could not submit to the restrictions formerly practiced by England and that it was time to put an end to them by a treaty or convention which would modify the maritime code. Mr. Buchanan replies that the British Government, after many hesitations and after consulting with France, showed itself disposed to make concessions. We are going to make you the same offers. The position which you may occupy on the sea during the present conflict does not change the question in our eyes; you are a great power, and you have the right to give your vote when international law is in question. Moreover, we would be neglectful of the friendship which exists between the two Governments if we did not address you at the same time as France and England.

During the second conversation, "three days later", Marcy read to Stoeckl confidentially a despatch from Buchanan which had told of the decision of the British Government as to the course to be followed in respect of neutral rights *"for the present war"*. This was doubtless the despatch of Buchanan of March 17, cited above, which had been received on April 1. After the reading, Marcy said: "This is a concession; but still it is not responsive to our idea. What we wish is to establish these principles in the law and by some document make them forever obligatory."

The third conversation was on April 14, when Marcy handed to Stoeckl the note of that date after reading it to him. When Marcy came to the passage expressing hope for the cooperation of the Emperor of Russia, Stoeckl asked him whether, if England and France refused to sign such a convention, the Government of the United States would desire to conclude one with Russia. To this Marcy answered "Yes, certainly". He also said that the point of the paragraph of his note mentioning "other severe rules" was not of urgent or immediate interest and could be left to more opportune times.

After his note had been read, Marcy went more into detail regarding the proposed convention; his remarks are thus reported:

This convention will establish in sum two points only:
1) That the flag covers the goods.
2) That neutral cargo on board a vessel of one of the belligerents is not subject to confiscation.
There are still other points, but they are not so important as these, and we shall not concern ourselves with them at this time.
We are going again to ask France and England to sign this convention; if they refuse, as I have every reason to think, we will conclude it with you alone in the first instance. We will then put forward the same proposals to the maritime powers of the second rank. Having less means of defending their rights, they are, because of that very fact, interested in seeing them determined by rules in a

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definitive manner; and we have no doubt that they will give their consent to them, provided that they succeed in escaping English influence.

It is also necessary to insert in this convention that each of the contracting parties may conclude a similar one with any other power and that these new engagements shall be obligatory for all the co-signatories, for each among themselves separately and for all in general. For example, if America, after making a convention of this kind with Russia, made a similar one with Sweden, Russia and Sweden would thereby be bound each to the other.[1]

In his despatch Stoeckl mentions a resolution [2] on the subject of neutral rights recently introduced in the House of Representatives, which he thought (mistakenly) had been adopted by that body, and gives his conclusions in these two paragraphs:

All these data indicate clearly that the Americans are still far from being satisfied by all the concessions of England. Above all, the manner in which they have been made wounds their *amour propre*. Great Britain seems to grant them a favor; she assumes the air of generously desisting from a right for a limited period, although in reality she only yields to necessity. Now, the Americans will be too glad to destroy the arbitrary laws which England has been jealous of exercising on the seas to fail to take advantage of so favorable an opportunity to humiliate their old rival, and this especially at the moment when she makes so pompous a display of her forces.

In this state of things the United States will not give way at all, and in support of this assertion I take the liberty of quoting to you, Mr. Chancellor, what the Secretary of State said to me very recently in speaking of the licenses that Great Britain proposes, it is said, to give to her own ships to enter our ports: "If the English establish a blockade, that is a right which we cannot contest; but if they permit their vessels to go into your ports and if their squadrons are there only to prevent the neutrals, and consequently ourselves, from entering, that is to establish a kind of monopoly which we cannot tolerate."

The comment of the Emperor (Nicholas I) written on the despatch is this: "Nothing better could happen for us. Follow up the matter by having Seymour [3] come to see us tomorrow if possible. We must not lose time."

In another despatch of April 20 Stoeckl told of a recent interview had with President Pierce at the White House, Marcy being present; the war was talked of, with comments on the declarations and intentions of Great Britain and France; but there was no reference to the proposed convention (*ibid.*, despatch No. 15, file K.167, No. 1093).

Under date of May 1, 1854, Stoeckl reported an interview had with Senator James M. Mason, of Virginia, Chairman of the Senate Committee on Foreign Relations; Mason had expressed complete approval of the proposed convention and had said that the Senate would con-

[1] Cf. Article 3 of the convention.

[2] This resolution was introduced on April 10, 1854, and was referred to the Committee on Foreign Affairs (see Congressional Globe, 33d Congress, 1st session, pp. 883, 884–85).

[3] Thomas H. Seymour, at the time Governor of Connecticut, was appointed Minister to Russia on May 24, 1853, but did not accept the appointment until after he had relinquished the governorship, on the following October 13. His sailing for Europe was delayed until December 24, 1853, and he did not reach St. Petersburg until March 24, 1854 (D.S., 16 Despatches, Russia, No. 1, March 31, 1854). The presentation of his credentials took place on Sunday, April 2, and the subject of the freedom of the seas was then mentioned in his conversation with the Emperor of Russia (*ibid.*, No. 2, April 13).

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firm it eagerly (*ibid.*, despatch No. 20, file K.167, No. 1109). The notation of the Emperor on this despatch is: "We must make haste to follow it up" ("Il faut se hater, d'y donner suite").

The despatches of Stoeckl of April 20, 1854, were received at St. Petersburg on Sunday, May 21; and a letter, also of April 20, from Marcy to the American Minister, Thomas H. Seymour, which included the following paragraph (49 Marcy Papers, 43933–34), was delivered at about the same time (probably on May 22):

> Despatches will be sent from Washington for you this afternoon. The matter of the greatest interest with this Government at this time,—War having broken out among the principal powers of Europe—is that which relates to Neutral rights. You will have perceived before this is received, that both Great Britain & France have agreed *for the present*, that Neutral ships shall make neutral goods except articles Contraband of War. This is the early and favorite doctrine of this Country in which it has had the concurrence of Russia and we do not doubt she will observe it not in this war only but will cooperate with the U States in upholding it in all time to come as a part of the international Code. The US mean to avail themselves of the present occasion—believing it to be a favorable one—to have it established and recognized by all nations. The despatches which you will receive with this, relate principally to that subject.

But the "despatches" to which Marcy referred were not with his letter; the only one of them that is here relevant is the instruction of April 14, 1854 (D.S., 14 Instructions, Russia, 109–11; printed in Savage, I, 371–72), which Seymour did not receive until May 27 (letter of May 31, 1854, in 50 Marcy Papers, 44080–81).[1] In the meantime, and very promptly, the Russian Government had decided to accept the proposals of the United States. Seymour wrote as follows to Marcy on Friday, May 26 (*ibid.*, 44056–57, excerpt):

> The day following the receipt of your letter, I had a call from Baron Nicolaie,[2] who came to see me at the request of Count Nesslerode.[3] He had with him a copy of your letter[4] to Mr. Stoekle the Russian Chargé at Washington, on the subject of Neutral Rights which copy of your letter he desired me to read. I did so and told the Baron that I was expecting despatches every day, and that when received, if they should relate to the same matter, I would ask for an interview with Count Nesslerode—and that if any authority whould be given me to take any definite action in regard to the same, I would be ready to proceed to business at once. He informed me that the Emperor had been consulted on the subject, and that he was ready to adopt the necessary measures for the carrying out the views of our Government respecting the doctrine of free ships free goods &c.
>
> In consequence of what passed between me and Baron Nicolaie at that time, the project of a Convention was drawn up, and placed in my hands for perusal, the substance of which is herewith submitted. After that I had a very agreeable interview with Count Nesslerode, to which I may refer in my next despatch.[5] I will mention in this place, that at our meeting for the purpose of talking over this matter, I produced a copy of the instructions to Mr Randolph in 1830, and

[1] A later instruction on "free ships, free goods", dated May 9, 1854 (Savage, I, 374–75; D.S., 14 Instructions, Russia, 111–13), was received by Seymour on May 31, when he found it "unnecessary for me to do more than keep the subject under consideration" (D.S., 16 Despatches, Russia, June 5, 1854, unnumbered).

[2] Generally "Nicoli" in the despatches. Perhaps the Baron Nicolay mentioned in Annuaire diplomatique de l'Empire de Russie pour l'année 1862, 8.

[3] This was probably on May 23, 1854.

[4] The note of April 14, 1854, printed above.

[5] Seymour makes no further reference to this interview.

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found that the Count had anticipated me by having a copy of the same on his table, which he seemed to regard as a standard production.[1]

The summary project enclosed by Seymour is in *ibid.*, 44082–83; it is marked as received on June 7, 1854, which is a mistake for July 7; and from its text, which follows, it will be seen that it generally corresponds to the first four articles of the draft sent by Nesselrode to Stoeckl, which is described below:

The rights of neutrals at sea which they recognise as the necessary condition of the freedom of navigation and of maritime commerce.

Art 1st The two contracting parties recognise as permanent and immutable the following principles—1st that free ships make free goods; that is, that effects and goods belonging to the subjects or citizens of a Power engaged at war shall be deemed free on board of neutral vessels, with the exception of such articles as are distinguished by the name of contraband of war.

2d that the property of neutrals found on board of an enemy's ship except contraband of war is not liable to confiscation.

The contracting parties agree to apply these principles to the commerce and navigation of any power that might be willing to accept them as permanent and immutable.

Art 2d Contraband—with the exception of such articles as are strictly requisite for the *immediate use* and defence of the ship or of the men who belong to the crew. Expressly understood &c shall not be included (in the list of contraband) Naval stores, nor any material used in the construction of vessels.

Art 3d The two &c reserve the right &c to agree ulteriorly according to circumstances, upon the application and the extension that might be thought necessary to be given to the principles laid down in Article 1st but they declare that they will from the present moment accept the stipulations of Art 1st as a rule to be observed whenever they will be called upon to appreciate the rights of neutrals.

Art. 4th The right reserved to each of communicating this &c to the friendly powers of Europe.

The following cipher instruction of Nesselrode to Stoeckl, dated May 23, 1854 (May 11, Old Style), was sent the same day by mail (D.S., file 026 Treaties/2096, despatch No. 2124, from Moscow, of December 5, 1936, enclosure, facsimile from the Moscow archives, instruction No. 262, translation from the French):

The Emperor accepts the proposal of the President. He is ready to conclude the convention on the basis which has been indicated to you. Full powers in your name and instructions will be sent you by young Bodisco,[2] who, with an

[1] The instruction to John Randolph of Roanoke, dated June 18, 1830, with the elaborate project of a convention respecting maritime rights, of one declaratory and twenty-six numbered articles, is in D.S., 13 Instructions, U.S. Ministers, 127–71; relevant portions of the instruction and of the project are printed in Savage, I, 336–49; for a modifying instruction of March 31, 1832, to James Buchanan, the successor of Randolph at St. Petersburg, see *ibid.*, 349–50. In a despatch of June 12, 1832, Buchanan wrote that Randolph, soon after his arrival, "had placed in the possession of the Russian Ministry, 'every paper public and private', with which he had been entrusted, touching the negotiation which the President had instructed him to open with this Government" (D.S., 12 Despatches, Russia, No. 2; see also, in *ibid.*, a despatch of John Randolph Clay of January 27, 1831, No. 3).

[2] This was Waldemar de Bodisco, nephew of the former Russian Minister at Washington, Alexandre de Bodisco (D.S., 3 Notes from the Russian Legation, September 7, 1842, enclosure). Bodisco sailed from Bremen on June 16 on the steamship *Washington*, from Southampton on June 21, and arrived at New York on Wednesday, July 5, 1854 (New York Herald, July 6, 1854, pp. 7, 8, naming among the passengers "Wyldemar Bodisco").

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American passport and under an assumed name, will embark at Bremen on June 4/16. Unhappily no steamer leaves there sooner. I have received your despatches to No. 22 inclusive.

The foregoing instruction was followed by one dated June 7, 1854 (May 26, Old Style), carried by Bodisco and reading as follows (*ibid.*, No. 307, translation from the French):

The despatches transmitted by you on April 8/20 were delivered to me during the morning of May 9, Old Style, and I hastened to place them before the Emperor. The overtures which you recount in No. 14 have necessarily had in a high degree the attention of His Imperial Majesty. You know that more than twenty years ago the Government of the United States proposed to us to agree upon the principles to be followed in respect of neutrals in the case of a maritime war.[1] Circumstances did not then permit the Imperial Cabinet to enter into premature engagements regarding questions in which Russia had, moreover, no particular interest in taking a formal stand. Today, Sir, these considerations no longer exist, and you will judge by the annexed documents of the welcome which the new proposals of the Cabinet of Washington have received from our August Master.

I have the honor to transmit to you a full power by which the Emperor is pleased to authorize you to enter into negotiations regarding the rights of neutrals and to conclude a formal convention on this subject. I add thereto a project which responds to the ideas that Mr. Marcy has expressed to you and which might serve as a basis for your *pourparlers* with him.

Article 1 sets forth the two fundamental principles on which the Cabinet of Washington desires above all to establish a common understanding. You will observe that I have added thereto a clause by virtue of which the benefit of these two principles would not be acquired by powers who would refuse to recognize them as permanent and immutable.

Article 2 contains a definition of contraband of war substantially similar to that furnished by all treaties regarding the matter.

Article 3, by which the contracting parties contemplate a later agreement if it should be necessary, has for its chief point the coasting trade, of which Mr. Marcy has spoken to you. We shall await his overtures on this subject to take them into consideration.

Article 4, which likewise expresses one of Mr. Marcy's ideas, hardly requires explanation. I shall merely observe that I have mentioned only European powers because, with the exception of Brazil, we have no political relation with the states of Central or South America.

As to the ratifications mentioned in Article 5, it is to be supposed that the Government of the Union will wish to exchange the same at Washington, and there is no reason why you should not consent to this in the name of the Imperial Cabinet.

Accompanying that instruction was another of the same date, in these terms (*ibid.*, No. 308, translation from the French):

The project of convention that I send you with my despatch of this date embodies the principal ideas which Mr. Marcy has set forth in his note of April 14 and which he has developed in his confidential interviews with you. But you will observe, Sir, that this is not at all a draft definitively drawn up which we intend to propose for the adoption of the Cabinet of Washington. As I have said in my despatch, our project may *serve as a basis* for the negotiation which you are authorized to open and which you will carry on, I am sure, to a satisfactory result. If, then, the Secretary of State asks to introduce therein, either in sub-

[1] The reference is to the proposals made following the instruction of June 18, 1830, cited above. In his final conversation on the subject with Nesselrode on July 28, 1833, Buchanan was told that he could be given "no encouragement" (D.S., 12 Despatches, Russia, July 31, 1833, No. 21).

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stance or in the drafting, some modification, addition, or deletion, you will be able to subscribe thereto without requesting therefor an express authorization of the Imperial Ministry. We are in accord with the Cabinet of Washington on the principles which the two Governments propose to follow hereafter in respect of neutrals. The convention will have as its object the establishment of those principles in terms at once the most clear and most simple. Accordingly, we have omitted therefrom for the moment all secondary questions, which seems to have been the intention of Mr. Marcy himself; for the essential is that an act conceived in this spirit shall exist between the two Governments and that the political and commercial world shall have knowledge thereof, and this as soon as possible.

If, as we are persuaded, the Cabinet of Washington is of our way of thinking, it will perhaps deem it useful to cause the exchange of ratifications to be had, not at Washington, as has been the practice for our previous acts with the United States, but at St. Petersburg. We would thus gain much time, because by the return of the courier who brings you the present papers we could receive the convention signed by the Plenipotentiaries, while Mr. Seymour would be put in possession of the instrument of ratification of his Government, which would be exchanged at once for the Imperial ratification. I direct you, Sir, to put forward this consideration, which will perhaps induce the Cabinet of Washington to depart, under these circumstances, from the usage heretofore followed.[1]

The project with the instructions of Nesselrode was, like them, written in French; it comprised a preamble, five articles, and final clauses; it was taken as the basis of the brief discussions which followed its receipt at Washington;[2] the second of its articles, defining contraband, was dropped; another, the fourth, regarding accession by other states, was somewhat recast; but for the rest the Russian draft differs little from the French version of the convention, as will be seen from the following comparison of the wording.

The preamble of the draft (with blanks for the names of the Plenipotentiaries) is almost literally the preamble of the convention.

Article 1 of the draft was taken into the convention with slight change. In the first principle of the former the words "où Etat" are absent; "exempts de capture ou confiscation sur" reads simply "libres sur"; and the word "réputés" follows "objets"; in the final sentence of the second principle of the draft, "Puissances et Etats qui voudront" reads "Puissance qui voudra".

Article 2 of the draft, reading as follows, is not in the convention:

	[Translation]
Il est entendu que sous la dénomination de contrebande de guerre sont compris les armes à feu de toute espèce: telles que fusils, pistolets, canons, mortiers obusiers, fusées, grenades; les armes blanches: telles que sabres, épées piques, lances, baïonnettes poignards; les munitions: telles que poudre a canon,	It is agreed that under the denomination of contraband of war are included firearms of every kind, such as muskets, pistols, cannon, mortars, howitzers, fusees, grenades; side arms, such as sabers, swords, pikes, lances, bayonets, daggers; munitions, such as powder for cannon, bullets and lead, cannon balls,

[1] There is a marginal note to this instruction pointing out that the term allowed for the exchange of ratifications in previous cases had been six months for the convention of July 12, 1822 (Document 44); ten months for the convention of April 17, 1824 (Document 46); and one year for the treaty of December 18, 1832 (Document 75). In each of those instances the ratifications were exchanged at Washington.

[2] The instructions of Nesselrode reached New York on July 5; the convention was signed on July 22, 1854.

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balles et plomb, boulets bombes, obus, soufre, salpêtre; enfin les objets d'équipement militaire, et en général tout ce qui peut servir immédiatement à l'usage de la guerre, et ce qui n'est pas strictement nécessaire à la propre défense ou aux besoins du bâtiment sur lequel ces objets se trouvent chargés, ou des hommes qui en composent l'équipage. Ne seront pas considérés comme contrebande les matériaux servant à la construction ou au gréement de navires quelconques.

bombs, shells, sulphur, saltpeter; in short, articles of military equipment and in general anything that may serve directly for use in war and that is not strictly necessary for the defense or needs of the vessel itself on which these articles are laden or of the men who make up the crew thereof. Materials serving for the construction or outfitting of ships of any sort whatever shall not be deemed contraband.

Article 3 of the project (there written in two paragraphs) is word for word Article 2 of the convention.

Article 4 of the draft is in three sentences; the last of these is the second (final) sentence of Article 3 of the convention; but the opening wording of that Article 3 is notably different from the corresponding clauses of the draft, which read thus:

[Translation]

Les Parties contractantes se réservent, chacune pour sa part, de porter la présente Convention à la connaissance des Puissances amies en Europe.

Il est convenu que si l'une ou l'autre de ces dernières consentoit à y accéder, les droits et obligations résultant de cette accession seront communs aux deux Puissances signataires de la présente Convention

The contracting parties reserve the right, each for itself, to bring the present convention to the knowledge of the friendly powers of Europe.

It is agreed that if one or another of these last shall consent to accede hereto, the rights and obligations resulting from such accession shall be common to the two powers signatories of the present convention.

Article 5 of the draft and its final clauses became (with blanks filled and subject to the *alternat*) Article 4 and final clauses of the convention.

The Russian draft had been based on the views of Marcy; and the final wording of the convention was easily arranged, for Stoeckl had been given by his instructions a wide discretion as to both form and substance. The changes from the draft were those proposed by Marcy; Stoeckl received his instructions by July 7 (Friday); he thus reported his interviews with Marcy on that day and on July 10 in his despatch of July 14 (State Archive of Foreign Policy, Moscow, despatch No. 41, file K.167, No. 1778; verified copy with despatch No. 1298, from Moscow, of May 24, 1938; D.S., file 026 Treaties/2145; translation from the French):

I at once called on the Secretary of State to announce to him that I had received the full powers and to give him the project of convention.

Three days later Mr. Marcy said to me that he had read it with the President, that they found that the project perfectly reproduced their ideas, and that if there was any change to be made, it would be only a few insignificant phrases.

I informed Mr. Marcy that I was furnished with the necessary authority to make these changes.

I then said to the Secretary of State that as I had opportunity to write to my Government only once a month by the Bremen steamers, I should be very grateful to him if he could sign the treaty in time to send it on the 3d/15th instant.

Mr. Marcy replied that despite his every desire to accelerate this matter it

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was impossible for him to finish it within the six days which remained to us; that as all treaties must be approved by the Senate it is the custom to consult in advance the members of the Committee on Foreign Relations; that on this occasion he was sure of their approval but that by courtesy he must fulfil that formality. Mr. Marcy promised me that despite this he would sign the treaty the following week.

As soon as the convention is signed it will be sent to the Senate, which examines these matters in order in executive session. The Senate will be adjourned [1] on August 4,[2] and I know that it is very busy. I shall nevertheless do all in my power to bring it about that the Senate deviate from the established rules and that the convention may be ratified before the adjournment of this session. Mr. Marcy has promised to help me in this.

I have communicated to the Secretary of State the desire which Your Excellency expressed that the exchange of ratifications take place at St. Petersburg and not at Washington as has been done heretofore. Mr. Marcy did not hesitate to give his consent to this,[3] and we have arranged as follows:

After the convention has been signed and approved by the Senate, it will be ratified by the President and sent to Mr. Seymour with full powers to make the exchange against the ratification of the Imperial Government.

I shall not fail, Mr. Chancellor, to inform you by a cipher despatch of the signature of the treaty.

I likewise reached an understanding with Mr. Marcy in respect of the *alternat*. We shall follow in that regard the method adopted in our previous transactions, that is to say, that each of the contracting parties will sign first the example to be retained by that party.

According to the custom ordinarily in force here, the convention will be published forthwith after the approval of the Senate. I shall take care that this is so done in the present case, in order to put in evidence at the earliest moment a political transaction which will be a new proof of the good accord existing between the two Governments and which, therefore, cannot fail to produce much effect in Europe in general and particularly in England.

Regarding the changes from the Russian draft there is also this note of Stoeckl to Ambrose Dudley Mann, then Assistant Secretary of State; the date [4] of the note is July 20, 1854, two days before the signing (D.S., 4 Notes from the Russian Legation):

THURSDAY.

DEAR SIR, The omission of the 2d article is of no importance. Count Nesselrode tells me that he put it in merely because he found it in some other Conventions.

I agree entirely in the change made in the art. IV (now III) By requiring from other Powers nothing but a formal declaration that they accede to it we give more importance to this Convention making it the basis of the rules we want to establish.

So all is right. You will find the translation in the french projet If it can be copied to morrow; I may come to the Department sometime before Mr Marcy & you leave it and sign the Convention. It will not take more than a few minutes. I hope you will be kind enough to let me know what time shall I come.

Mr Marcy agreed to have the ratifications exchanged in St Petersbourg, however put St Petersbourg or Washington as you please.

I send you my full powers [5] where you will find in length all my great titles.

Very respectfully & sincerely yours

STOECKL.

[1] The French is *prolongé*, a slip for *prorogé*.

[2] This forecast was approximately correct, as the date of adjournment was August 7, 1854.

[3] It was later agreed that the ratifications should be exchanged at Washington.

[4] Stoeckl did not receive his instructions until July 6 or 7, so the only other possible date is July 13, which the wording of the note shows to be too early.

[5] I.e., the certified French translation thereof, cited above.

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For the place of exchange of ratifications Nesselrode had preferred St. Petersburg; and to this Marcy had agreed; but in the text signed Washington is designated (Article 4). Stoeckl wrote later that the change of place was requested by Marcy on behalf of the President (State Archive of Foreign Policy, Moscow, despatch No. 50, August 10, 1854, file K.167, No. 1962; verified copy with despatch No. 1298, from Moscow, of May 24, 1938; D.S., file 026 Treaties/2145).

The English version of the convention was written as a translation from the French (except the first sentence of Article 3, which was doubtless first written in English); and it is not in all respects a happy rendering; for example, "reserve themselves to come to an ulterior understanding" is neither good English nor the equivalent of "se reservent de s'entendre ultérieurement" (Article 2).

In his despatch of July 23 Stoeckl reported on the signing and the wording; the despatch begins thus (*ibid.*, despatch No. 47, file K.167, No. 1787, translation from the French):

> I signed the convention yesterday. There are two changes. We omitted entirely Article 3 [of the Russian draft], wherein are enumerated the articles of contraband of war. Mr. Marcy said to me: "That falls within the category of questions still to be regulated. England, which is the most powerful on the sea, arrogates to herself the right to regulate this matter at her convenience. It is necessary that all the powers agree in order to decide in common what are the articles that are to be considered contraband of war."

Stoeckl then refers to the change from the Russian draft in the beginning of Article 3 of the convention as signed, and continues:

> Mr. Marcy said to me: "Instead of making separate treaties with other powers, a formal declaration on their part that they accede to ours will suffice. This is simpler and will give to our convention more importance. It will be the basis on which all the nations who wish to recognize the modifications of the maritime code that it is to perpetuate will be invited to meet." Pursuant to the authorization of Your Excellency, I subscribed to these changes. For the rest, we copied the project of the Ministry word for word. Pursuant to the wish of Mr. Marcy, we provided that the exchange of ratifications should take place at Washington. The convention has been sent to the Senate, which I hope will confirm it before its adjournment.

The convention was signed on a Saturday; the message sending it to the Senate is of the Monday thereafter, July 24, 1854; when read in the Senate the next day, a resolution of advice and consent was at once unanimously voted, without reference to committee [1] (Executive Journal, IX, 366–67); and ratification by the United States followed on August 12. At St. Petersburg the convention was approved and ratified (September 15) upon its receipt there on September 6 with Stoeckl's despatch of August 10 (D.S., file 026 Treaties/2096, despatch No. 2124, from Moscow, of December 5, 1936, en-

[1] In his despatch of July 31, 1854 (State Archive of Foreign Policy, Moscow, despatch No. 48, file K.167, No. 1873; verified copy with despatch No. 1298, from Moscow, of May 24, 1938; D.S., file 026 Treaties/2145), Stoeckl says that apart from a few words spoken by Senator James M. Mason there was no discussion in the Senate.

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closure, facsimile from the Moscow archives, instruction No. 482, September 10, 1854, Old Style; with that instruction the instrument of ratification was enclosed). The exchange of ratifications took place at Washington on October 31, 1854, and proclamation was made the next day.

ARTICLE 3

The plan of Marcy (written in Article 3 of the convention) was to obtain general consent to the recognition of the two principles of Article 1 of the convention with Russia. The procedure which Marcy outlined to Stoeckl is thus quoted by the latter in his despatch No. 50, of August 10, 1854 (above cited; translation from the French); the date of the conversation is not stated, but it was after action by the Senate and seemingly before August 7:

I am going to send a copy of this treaty immediately to Mr. Buchanan with directions to communicate it to the British Government and to invite that Government to conclude a like convention. We shall simultaneously make the same offer to the French Government.

I do not conceal from myself that the signature of this convention, and above all the eagerness with which the Senate has welcomed and ratified it, will wound the *amour propre* of the Cabinets of London and Paris; and it is to be presumed that they will refuse, for the present at least, to accept our proposal.

But if those powers persist in recognizing the principle *that the flag does not cover the goods* as a right which belongs to them as belligerent powers, we shall declare to them once for all that so long as they desist from that right we have nothing to say; but if it is ever put into practice, we have decided to oppose it to the utmost.

We are going to make the same proposal to all the other powers. We shall commence with Prussia, which, having always shared our way of looking at this question, will show itself, without any doubt, disposed to give its assent thereto. We know in advance that Sweden, Denmark, the Netherlands, and the other powers of the second rank ask nothing better than to recognize the principles established by our convention. Not being, as we are, in a position to defend their rights by force, they will all the more eagerly place them under the safeguard of an international law.

It may be, however, that under present circumstances those Governments will hesitate to sign an act which might ruffle the susceptibilities of England and France. It would consequently be well that the steps which we shall take on our side be seconded by the Imperial Government and that the representatives of His Majesty the Emperor act in concert with ours to attain the common end which we have in view.

The notation of the Emperor on that despatch is: "I see no objection to supporting these steps"; and in the acknowledging instruction of September 22, 1854, Nesselrode wrote (D.S., file 026 Treaties/2096, despatch No. 2124, from Moscow, of December 5, 1936, enclosure, facsimile from the Moscow archives, instruction No. 482, September 10, 1854, Old Style, translation from the French):

We know already that steps have been taken in this sense by the Minister of the United States at Berlin. It was sufficient for the Emperor to be informed of this for him to have Baron von Budberg directed to associate himself with those measures in the name of the Imperial Cabinet.

The representatives of the Emperor at [1] Stockholm, Copenhagen, The Hague,

[1] In the margin, with an interrogation mark, is "Autriche".

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Brussels, Hanover, Lisbon, Naples, and Athens will be charged to communicate officially the convention of July 10/22 to the respective Courts to which they are accredited, inviting them to accede by means of a formal declaration to the rules established by Article 1 of the said convention. They will, however, not have to take this step until their American colleagues have received the order to do so on their part.

Please inform Mr. Marcy of these provisions, which agree with the views that he was good enough to express to you.

Marcy was duly informed by Stoeckl of the directions given to the representatives of Russia at the eight Courts named (State Archive of Foreign Policy, Moscow, despatch No. 68, November 6, 1854, file K.168, No. 2478; verified copy with despatch No. 1298, from Moscow, of May 24, 1938; D.S., file 026 Treaties/2145).

The first steps taken were instructions to London and Paris of August 7, 1854, written in similar but not identic terms (D.S., 16 Instructions, Great Britain, 308–10; 15 Instructions, France, 206–7; printed in Savage, I, 376–78). The instruction to Buchanan was as follows:

The Government of the United States as you are aware has strenuously contended for the doctrine that free ships make free goods, contraband articles excepted There is not I believe a Maritime power which has not incorporated it in some of its Treaties but Great Britain which is the most considerable of them has constantly refused to regard it as a rule of international law. Her Admiralty courts have rejected it and ours have followed after them. When Great Britain and France at the commencement of the present war with Russia, agreed to act upon that principle for the time being this Government believed that a fair occasion was presented for obtaining the general consent of commercial nations to recognise it as a principle of the law of nations. An intimation of a wish on the part of the United States to accomplish this object was conveyed to Mr. Seymour, our Minister in Russia and by him made known to the Government of that Country.[1] The Emperor very promptly furnished his representative here with full powers to make a convention on the subject. One was entered into on the 22nd day of July and concurred in by the Senate on the 25th of that month.

By direction of the President I herewith send to you a projet of a similar Convention to be proposed to Her Britannic Majesty's Government.

France as well as other powers will also be invited to enter into the same arrangement. With a view to prevent delays and embarrassments the proposed agreement embraces but two rules. First that Free ships make free goods except articles contraband of war and second that the property of neutrals not being contraband found on board of enemies' vessels shall be exempted from confiscation. This latter rule is not like the first contested, yet there is an obvious propriety in embracing both in the same arrangement. Were it omitted it might be again questioned in consequence of the establishment of the principle that the neutral flag protects the property under it. An attempt might be made to infer from that principle that the flag determined the character of the property under it.

I do not apprehend any serious opposition to the proposed Convention except from Great Britain. But for her resistance to the principle that the neutral flag protects the property under it if it be not contraband, it would long ago have been regarded as a well established rule of international law. She has impliedly admitted its justice by adopting it as the guide of her conduct in the present war. If it is fair towards neutrals to act upon it now it will be difficult for her to devise good reasons for not observing it in all future wars.

I am confident you will be able to overcome any reluctance on the part of the Government of Great Britain to adopt it as a rule of international law.

[1] As has been seen, the proposal of the United States was conveyed to the Russian Government by the despatches of Stoeckl and not through Seymour.

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With this instruction you will receive the Presidents full power to conclude the proposed convention

The proposal to Great Britain had no chance of success and was not formally presented by Buchanan until August 30, 1855 (see Moore, Works of James Buchanan, IX, 307–9, 365, 396–401).

By October 1854 similar proposals had gone forward for presentation to numerous other Governments, including, in Europe,[1] those of Denmark, the Netherlands, the Papal States, Portugal, Prussia, Sweden and Norway, the Two Sicilies, and Spain; in America, those of the Argentine Confederation, Bolivia, Brazil, Chile, Ecuador, Mexico, Nicaragua, Peru, and Venezuela; and, elsewhere, those of Hawaii, Egypt, Morocco, Tripoli, and Tunis.[2] But for reasons which are now obscure the proposals made to certain Governments were for a convention and to other Governments for a declaration; and it is also difficult to understand the reasons for the choice of procedure in particular cases. The convention form was that proposed to the Governments of Europe (excepting the Netherlands, and perhaps excepting the Papal States, as to which the record is confused), and also to the Governments of Brazil, Chile, Mexico, and Peru.

Thus the proposition of Marcy was presented to twenty-five governments, said in the annual presidential message of December 4, 1854, to be "those of Europe and America" (see Richardson, V, 275). But there were some notable and unaccountable omissions; states to which the proposal was not made[3] included, in Europe, Austria, Sardinia, Switzerland, and Turkey; and, in America, Costa Rica, El Salvador, Guatemala, Honduras, and New Granada. There were at the time no regular diplomatic missions for intercourse between this Government and those of Greece, Paraguay, and Uruguay.[4]

[1] The instruction to Brussels was not written until March 29, 1855 (D.S., 1 Instructions, Belgium, 87–88).

[2] References are: D.S., 14 Instructions, Denmark, 107, September 8, 1854; 6 Notes to the Netherland Legation, 81–82, July 31, 1854; 1 Instructions, Papal States, 29, September 8, 1854; 14 Instructions, Portugal, 168, September 8, 1854; 7 Notes to the Prussian Legation, 24–25, August 4, 1854; 14 Instructions, Sweden, 65, September 8, 1854; 14 Instructions, Two Sicilies, 84, September 8, 1854; 15 Instructions, Spain, 77–78, September 8, 1854; 15 Instructions, Argentina, 76, October 18, 1854; 1 Instructions, Bolivia, 26, October 18, 1854; 15 Instructions, Brazil, 240, September 9, 1854; 15 Instructions, Chile, 107, September 9, 1854; 1 Instructions, Ecuador, 65, October 18, 1854; 17 Instructions, Mexico, 14–15, September 9, 1854; 15 Instructions, American States, 227–28, October 18, 1854; 15 Instructions, Peru, 145, September 12, 1854; Legation Archives, Venezuela, Instructions, 1854–57, No. 9, October 18, 1854 (also 1 Instructions, Venezuela, 114, October 18, 1854); 2 Instructions, Hawaii, 54, October 18, 1854; 14 Instructions, Barbary Powers, 167, September 8, 1854. The instructions to Mexico and Venezuela are printed below.

[3] So far as disclosed by the archives of the Department of State; it is possible that some instructions were sent but not recorded; an instruction to John L. Marling, Minister Resident to Guatemala, is mentioned by reference in D.S., 2 Instructions, Hawaii, 54, and in 1 Instructions, Venezuela, 114; but no such instruction has been found in the Legation archives.

[4] To complete the statement it may be said that the United States at no time had diplomatic relations with the Courts of Modena, Parma, and Tuscany; relations with Haiti date from a later period; independence of the Dominican Republic was recognized on June 17, 1854, when a full power to negotiate a

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The results of the program were limited to the signing of nine international acts, four of which failed to go into force. In chronological order the nine instruments are as follows: convention with Mexico of January 8, 1855 (unperfected); convention with the Two Sicilies of January 13, 1855 (Document 171); declaration of Venezuela of March 10, 1855 (unperfected); declaration of Hawaii of March 26, 1855; declaration of Nicaragua of June 9, 1855; convention with Ecuador of April 9, 1856 (unperfected); treaty with Chile of May 27, 1856 (unperfected); convention with Peru of July 22, 1856 (11 Statutes at Large, 695–98); treaty with Bolivia of May 13, 1858 (12 *ibid.*, 1003–22), of thirty-six articles, only a few of which, particularly Article 16, are relevant here (see the editorial notes to that treaty). The four instruments which failed to go into force are discussed below.

It is unnecessary to review or even to cite the responses of all the various Governments; two are to be mentioned. The answer of the Netherlands, by note of September 22, 1854, was the first to be received; therein was this paragraph (D.S., 3 Notes from the Netherland Legation, translation):

> The Government of the King, my August Sovereign, fully appreciates the importance of the proposition of the Federal Cabinet. It sees in it an evidence of the good relations existing between the two countries—relations to which it attaches the utmost value. It has no objection to urge against principles which are entirely in accordance with its views upon this important question. Nevertheless, in order to preserve the strictest neutrality, which the Cabinet of The Hague has adopted as the rule of its political conduct from the commencement of the hostilities in which Europe is engaged, the Netherland Government has firmly resolved, in this case as in others, not to enter into any arrangement, unless it be in a case of extremity, which might place the Kingdom of the Netherlands in an exceptional position towards either of the great belligerent powers.

Marcy's comment, as quoted by Stoeckl, was: "Sad excuse, which proves only one thing, the bondage in which the nations of Europe are held by the Anglo-French league. I suppose that the other powers will make the same response to us. We hope, however, that Prussia and perhaps Sweden will show themselves better disposed" (despatch No. 68, of November 6, 1854, cited above, translation from the French).

The answer of Prussia is of particular interest, as it reflected British influence [1] and foreshadowed the Declaration of Paris. Stoeckl wrote

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treaty of commerce and extradition was issued to William L. Cazneau (D.S., 4 Credences, 76); in a treaty signed with the Dominican Republic on October 5, 1854, which did not go into force (D.S., Unperfected R), there were clauses on neutral rights (Articles 9 to 18), mostly adapted from the convention with France of September 30, 1800 (Document 25); the "principle that the flag covers the goods" was admitted (Article 11), but with specific mention only of the neutral, and not of the enemy, flag; in another treaty with the Dominican Republic, signed on March 8, 1856 (D.S., Unperfected S), which also did not go into force, the same principle was admitted (Article 18), but the rule of "enemy flag, enemy goods" was laid down, "but only with respect to those governments that also acknowledge it"; that article was inconsistent with the position of Marcy.

[1] As to British influence at Madrid when the American proposal was presented, see Ettinger, Mission to Spain of Pierre Soulé, 455.

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that he had been informed by the Russian Minister at Berlin that the Prussian Minister at London had conversed with Lord Clarendon regarding the convention and that the latter had said that Great Britain would have no objection to admitting the principles established thereby if a clause that privateers were forever abolished were inserted therein. Marcy's comment on this, as reported by Stoeckl, was as follows (addendum to despatch No. 68, of November 6, 1854, cited above, translation from the French):

> The English found the use of privateers excellent until they discovered that there is another nation which can derive greater advantage therefrom. They wish, they say, to shelter private property as much as possible from the harmful effects of war. This gives rise to phrases meant for effect; but their acts in the Baltic and in the White Sea are there to prove how much they are disposed to put this principle into practice.

The note of Baron von Gerolt, Prussian Minister at Washington, dated November 22, 1854, follows (D.S., 2½ Notes from the Prussian Legation, translation):

> The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Prussia, has the honor of informing the Honorable Secretary of State of the United States that the King's Government has seen with the liveliest interest the draft of a convention to be concluded between Prussia and the United States which the Honorable W. L. Marcy addressed to His Majesty's Legation in his note of August 4 of this year, with the object of effecting the recognition by the two Governments, as a principle of the law of nations, of the principles adopted by the Governments of Great Britain and France in the present war against Russia in favor of neutrals, that is to say: (1) "that neutral ships cover the cargo, with the exception of articles of contraband"; (2) "that the property of neutrals on board an enemy's vessel is not subject to confiscation, articles of contraband excepted"; these principles being considered as rights of neutrals and as indispensable conditions for general freedom in navigation and commerce on the sea during maritime wars.
>
> His Majesty's Government having devoted its entire attention to a subject of such high importance, has instructed the undersigned to express to the Government of the United States its readiness to conclude the proposed convention, adding thereto at the same time further guaranties for the security and freedom of commerce.
>
> In accordance with the articles of the aforesaid draft convention, and fully appreciating the reasons that have suggested this measure, the initiation of which is owing to the liberal and far-sighted policy of the present administration of the United States in the interest of all commercial nations, the King's Government flatters itself that the American Government, faithful to this policy, will also, on this occasion, cooperate with the Prussian Government in obtaining from all commercial nations the recognition of another measure, also indispensable to the general freedom of commerce on the sea, that is to say: "the abolition of the practice among belligerent powers of giving letters of marque to privateers (commissioned private armed vessels) for the capture of property at sea of individuals belonging to the hostile power".
>
> Although this practice, which has always been attended by great abuses, has already fallen into disuse among maritime powers, as being incompatible with the liberal spirit of this century, there exists as yet no guaranty, by the common accord of the nations, that it will not be renewed in the future; and His Majesty's Government doubts not that it will meet with every sympathy for the abolition of this barbarous right in a Government which has never ceased negotiating with maritime powers for the realization of an object so important to the freedom of commerce between nations.
>
> These noble efforts on the part of the United States have been recently made evident by the publication, by the order of the last Congress, of a document

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entitled "President Monroe's Instructions—Commissions to Private Armed Vessels, &c.", House of Representatives Executive Document No. 111,[1] which contains the instructions given to the Representatives of the United States in Europe and the official correspondence relative to the negotiations which the American Government has had open since the year 1823 with the Governments of Great Britain, France, and Russia for the establishment as a principle of international law "that private property on the seas shall be considered sacred and be respected in time of war".

Already, before the period above mentioned, President Jefferson had acted in the same sense, and in one of the letters[2] in his "Published Correspondence" he mentions with pride the fact that he had been instrumental in inviting the Governments of Europe to abolish the use of letters of marque; but he attributes the initiation of this idea to Franklin, who made the proposition to the English Government in the month of January 1783 and who, in a letter addressed to M. de Vergennes at Paris on May 8, 1783, expresses his opinion "that the advantages which letters of marque produce could never afford an equivalent for the great material and moral evils which result from this practice, considering the misery in which it involves a large class of merchants, artisans, and farmers, who, with their families, constitute the most harmless and respectable portion of the human race"; finally, he denounces this practice as ruinous to the very nation that makes use of it, which in pursuing a momentary advantage would acquire an appetite for this abominable sort of gain, etc., etc.

In the present war of England and France against Russia, those powers have relinquished the right to grant letters of marque, therein following the example of Prussia and Denmark during the war between those two states in 1848 and 1849; and although Prussia had but two vessels of war with which to oppose the naval forces of Denmark, the Prussian Government refused the offers made to it at the time for defense against its adversary by means of armed privateers with letters of marque.

In consideration of these facts the undersigned has no hesitation in proposing, in the name of his Government, to the Honorable Secretary of the United States, that there be added to the proposed convention an article declaring the abolition of letters of marque between the two nations; and he flatters himself that the Government of the United States will concur in this measure in the general interest of commerce.

In requesting the Honorable W. L. Marcy to have the goodness to communicate to him his views on the subject, he has the honor to renew to him the assurances of his most distinguished consideration.

The reply of Marcy, of December 9, 1854 (D.S., 7 Notes to the Prussian Legation, 28–29), referred to the views of President Pierce expressed in his annual message of December 4, 1854. In the two paragraphs which are here excerpted from that message, are set forth in advance the attitude of the United States regarding the Declaration of Paris in 1856 (Richardson, V, 276–77):

The King of Prussia entirely approves of the project of a treaty to the same effect submitted to him, but proposes an additional article providing for the renunciation of privateering. Such an article, for most obvious reasons, is much

[1] 33d Congress, 1st session (serial 726).

[2] The letter of Jefferson referred to is doubtless that of March 30, 1826, to John Quincy Adams, which is printed in Washington, Writings of Thomas Jefferson (the 1854 edition, then available to Von Gerolt), VII, 436–37, and in Ford, Works of Thomas Jefferson, Federal edition, XII, 467–68. On January 1, 1815, Jefferson had written to James Monroe, then Secretary of War, urging the use of privateers (*ibid.*, XI, 442–46); this was eight days after the signing of the Treaty of Ghent (Document 33), but before knowledge of the fact had reached the United States. For the views expressed by Franklin in 1783 regarding privateering, see Wharton, Diplomatic Correspondence, VI, 210–11, 409–10.

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desired by nations having naval establishments large in proportion to their foreign commerce. If it were adopted as an international rule, the commerce of a nation having comparatively a small naval force would be very much at the mercy of its enemy in case of war with a power of decided naval superiority. The bare statement of the condition in which the United States would be placed, after having surrendered the right to resort to privateers, in the event of war with a belligerent of naval supremacy will show that this Government could never listen to such a proposition. The navy of the first maritime power in Europe is at least ten times as large as that of the United States. The foreign commerce of the two countries is nearly equal, and about equally exposed to hostile depredations. In war between that power and the United States, without resort on our part to our mercantile marine the means of our enemy to inflict injury upon our commerce would be tenfold greater than ours to retaliate. We could not extricate our country from this unequal condition, with such an enemy, unless we at once departed from our present peaceful policy and became a great naval power. Nor would this country be better situated in war with one of the secondary naval powers. Though the naval disparity would be less, the greater extent and more exposed condition of our widespread commerce would give any of them a like advantage over us.

The proposition to enter into engagements to forego a resort to privateers in case this country should be forced into war with a great naval power is not entitled to more favorable consideration than would be a proposition to agree not to accept the services of volunteers for operations on land. When the honor or the rights of our country require it to assume a hostile attitude, it confidently relies upon the patriotism of its citizens, not ordinarily devoted to the military profession, to augment the Army and the Navy so as to make them fully adequate to the emergency which calls them into action. The proposal to surrender the right to employ privateers is professedly founded upon the principle that private property of unoffending noncombatants, though enemies, should be exempt from the ravages of war; but the proposed surrender goes but little way in carrying out that principle, which equally requires that such private property should not be seized or molested by national ships of war. Should the leading powers of Europe concur in proposing as a rule of international law to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the United States will readily meet them upon that broad ground.

There is little record of mutual communication of "the results of the steps which may be taken on the subject" (final sentence of Article 3). Two printed copies of the convention with the Two Sicilies of January 13, 1855 (Document 171), were sent to Seymour on August 13, 1855 (D.S., 14 Instructions, Russia, 121); and Stoeckl wrote in his despatch of July 24, 1855, that the ratifications thereof had been exchanged and enclosed a copy; he quoted Marcy as saying: "The Neapolitan Government has drawn on itself more than one threat on the part of the Allies for having consented to sign this treaty; but it has had the courage not to yield. It is to be hoped that this firmness, displayed by a small state, will induce the other powers to show themselves more independent and to join us in perpetuating definitively principles the incontestable utility of which they have themselves recognized" (State Archive of Foreign Policy, Moscow, despatch No. 53, file K.227, No. 1510; verified copy with despatch No. 1298, from Moscow, of May 24, 1938; D.S., file 026 Treaties/2145; translation from the French).

The Unperfected Convention with Mexico of January 8, 1855

A convention on the subject of neutral rights was proposed to the Government of Mexico pursuant to an instruction of Secretary of

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State Marcy of September 9, 1854 (D.S., 17 Instructions, Mexico, 14–15), as follows:

Herewith I transmit to you a copy of a Convention recently concluded between the United States and the Emperor of Russia, affirming, as permanent and immutable the principles that free ships make free goods,—contraband excepted—and that the property of neutrals not contraband, found on board of enemies' ships is not confiscable.

These principles are to be scrupulously observed towards all powers which accede to the same. It is the intention of the United States to propose to the principal powers to enter into treaty stipulations for their recognition.

They have been adopted by Great Britain and France as rules of conduct towards all neutrals in the present European war; and it is presumed that neither nation will refuse to recognize them as rules of international law, and to conform to them in all time to come.

You will submit a proposition to the Government of Mexico to adopt these principles under the sanction of a Treaty.

Should that Government be disposed to meet these views of the President of the United States, this Government will promptly enter into negotiations with that Republic upon the subject.

James Gadsden, Minister to Mexico, reported the conclusion of the negotiations in his despatches of January 5, 17, and 19, 1855 (D.S., 19 Despatches, Mexico, Nos. 52, 53, and 54). The convention of January 8, 1855 (signed on January 16), was written in the two languages, the English version, which follows, being on the left pages (D.S., Unperfected K2):

The Republic of Mexico, and the United States of America; equally animated with a desire to maintain and preserve from all interruption: the Relations of good understanding; which it is important should at all times subsist: between themselves, and between the Inhabitants of their respective States: have mutually agreed to reaffirm, what has been so emphatically recognized in the 16th Article of the Treaty [1] of the 5th of April 1831, and to perpetuate by a formal Convention: The Principles of the Rights of Neutrals at Sea, which they recognize as indispensable conditions of all freedom of navigation, and maritime trade— For this purpose the President of the United States has appointed James Gadsden Envoy Extraordinary, and Minister Plenopotentiary of the same; near the Mexican Government; and the President of Mexico has appointed "ad hoc" ES Dr. Don Manuel Diez de Bonilla; Cavalier Grand Cross of the National and distinguished Order of Guadalupe, and Secretary of State: and of the office of foreign relations, and said Plenopotentiaries after having exchanged their full powers, found in good and due form, have concluded, and signed the following Articles

ARTICLE 1st

The Two Contracting parties recognize as permanent and immutable the following principles, to wit.

1st That Free ships make Free goods, that is to say, that the effects or goods, belonging to Subjects or Citizens of a power or State at war, are free from Capture, and confiscation, when found on board of neutral Vessels, with the exception of Articles of Contraband of War—

2d That the property of Neutrals on board of An Enemy's Vessel is not subject to Confiscation unless the same be contraband of War— They engage to apply these principles to the commerce, and navigation of all such Powers, and States, as shall consent to adopt them on their part as permanent and immutable.

ARTICLE 2d

The Two high Contracting parties reserve themselves to come to an ulterior understanding as circumstances may require, with regard to the application and

[1] Document 70.

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extension to be given, if there be any cause for it, to the principles laid down in the 1st Article. But they declare from this time that they will take the stipulations contained in said Article 1st as a rule, whenever it shall become a question to judge of the rights of Neutrality.

ARTICLE 3d

It is agreed by the high Contracting parties that all nations which shall or may consent to accede to the rules of the first Article of this Convention, by a formal declaration, stipulating to observe them; shall enjoy the rights resulting from such accession, as they shall be enjoyed and observed by the two Powers signing this Convention— They shall mutually communicate to each Other the results of the steps which may be taken on the subject—

ARTICLE 4th

The present Convention shall be approved and ratified by the President of Mexico, and by the President of the United States of America, by and with the advise and consent of the Senate of Said States; and the ratifications of the same shall be exchanged at Washington within the period of six months; counting from this day, or sooner if possible

In faith whereof, the respective plenipotentiaries have signed the present convention, in duplicate; and thereto affixed the Seal of their Arms—
Done at the City of Mexico this 8th day of January in the Year of Grace 1855
JAMES GADSDEN MANUEL DIEZ DE BONILLA [Seal]

The convention was submitted to the Senate with the presidential message of February 1, 1855, and was unanimously accepted by that body on the following March 3 (Executive Journal, IX, 409, 410, 422, 435). It was ratified by President Pierce on March 7; but although the ratification on the part of Mexico was expected by the Mexican Minister, General Juan Nepomuceno Almonte, it was not received (see D.S., 7 Notes to the Mexican Legation, 20–21, 42, March 8 and July 9, 1855; 8 Notes from the Mexican Legation, March 26 and July 6, 1855). Accordingly, ratifications were not exchanged, and the convention failed to go into force. The text, in the two languages, is printed in Tratados y convenciones celebrados y no ratificados por la Republica Mexicana, 172–75.

In 1857 the Mexican Government declined to accede to the Declaration of Paris (D.S., 20 Despatches, Mexico, No. 27, March 17, 1857, enclosure of March 12, 1857); but on February 13, 1909, Mexico formally acceded to that declaration (102 British and Foreign State Papers, 667–68).

THE UNPERFECTED DECLARATION OF VENEZUELA OF MARCH 10, 1855

On March 10, 1855, there was signed at Caracas, in English and Spanish, a declaration reading as follows in the English version (D.S., 10 Despatches, Venezuela, No. 8, March 29, 1855, enclosure):

Declaration in relation to Neutral Rights signed and exchanged between the Plenipotentiaries of the United States and The Republic of Venezuela on The 10th of March 1855 [1]

[1] In the original declaration this heading, in English only, is written on a separate page, in the left-hand margin of which are the seals of the two Plenipotentiaries.

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Whereas a Convention was concluded at the City of Washington on the 22nd day of July 1854 between the United States of America and His Majesty the Emperor of all the Russias by the Plenipotentiaries of the High Contracting Parties, declaring the rules hereafter to be observed with respect to the Ships and property of the Citizens of the one party while the other may be involved in a war with a third Power:

And whereas the High Contracting Parties desirous of securing the concurrence of all other nations in the approval and observance of the said rules have agreed to extend all the benefits and privileges which shall result from the said Convention to such nation as shall consent to accede by a formal declaration to the stipulations therein contained:

And whereas the Government of the Republic of Venezuela has signified to the Government of the United States of America its desire to become a party to said Convention and to all the stipulations and provisions therein contained as far as the same are or may be applicable to it:

And whereas the Government of the Republic of Venezuela in its anxiety to avoid the possibility of a misconception hereafter of the nature and extent of the obligations which it thus assumes wishes them fully and distinctly expressed herein, they are accordingly inserted word for word as follows:

"ARTICLE 1.

"The two High Contracting Parties recognise as permanent and immutable the following principles, to wit:

"1st That Free Ships make free Goods—that is to say, that the effects or Goods belonging to subjects or citizens of a Power or State at war, are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war."

"2nd That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband of war.

They engage to apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them on their part as permanent and immutable."

"ARTICLE 2.

"The two High Contracting Parties reserve themselves to come to an ulterior understanding as circumstances may require, with regard to the application and extension to be given, if there be any cause for it, to the principles laid down in the first article. But they declare from this time that they will take the stipulations contained in said article first as a rule, whenever it shall become a question, to judge of the rights of neutrality."

Now therefore the undersigned Charles Eames Minister Resident of the United States near the Republic of Venezuela on the part of the United States and Francisco Aranda Secretary of State in the Departments of the Interior, Justice, and Foreign Relations, on the part of the Republic of Venezuela, invested with full power to this effect, found in good and due form, have this day signed in triplicate and have exchanged this Declaration. Done at Caracas on the Tenth of March Eighteen hundred and fifty five.

[Seal] CHARLES EAMES.
[Seal] FRANCISCO ARANDA

The proceedings and papers leading up to the signing of the foregoing instrument are relevant to the question whether the declaration went into force.

On October 18, 1854, the following instruction, similar to those written to various other missions on the same date, was sent by Secretary of State Marcy to Charles Eames, Minister Resident to Venezuela (D.S., Legation Archives, Venezuela, Instructions, 1854–

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57, No. 9; the project with the instruction is, with blanks to be filled, the same in all essentials as the English version of the signed declaration):

> Herewith I transmit to you a projet of a declaration in relation to neutral rights to be submitted to the Government of Venezuela for its approval and adoption. It affirms the principles that—free ships make free goods, contraband excepted,—and, that, the property of neutrals not contraband, found on board of enemies' ships is not confiscable.
>
> These two principles have been adopted by Great Britain and France as rules of conduct towards all neutrals in the present European war; and, it is presumed that neither nation will refuse to recognize them as rules of international law, and to conform to them in all time to come.
>
> The Emperor of Russia has lately concluded a Treaty with the United States embracing these principles as permanent and immutable,—and, to be scrupulously observed towards all powers which accede to the same.
>
> It is the intention of the United States to propose to the principal powers to enter into treaty arrangements for the recognition of these principles.
>
> Should the Government of Venezuela be disposed to meet these views of the President of the United States, this Government will promptly enter into Treaty stipulations with that of Venezuela upon the subject.

On December 9, 1854, Marcy wrote thus to Eames (*ibid.*, No. 10):

> Referring to my instruction of the 18th. October last, I now transmit to you a full Power to treat with the Venezuelan Minister of Foreign Relations upon the subject of neutral rights; it is believed that a declaration of accession on the part of the Government of Venezuela will accomplish all the ends which this Treaty is intended to attain.

The procedure desired by the Department of State had been rather obscurely stated; in the first instruction there was proposed a declaration (with a project thereof as an enclosure), but there was also mention of "Treaty stipulations"; with the second instruction was a full power; a "declaration of accession" was said to be equally satisfactory with "this Treaty"; and in the power itself, which is in customary form, the authority granted was "to agree, treat, consult and negotiate of and concerning the rights of neutrals and of all matters and subjects connected therewith, and to conclude and sign a Treaty or Treaties, Convention or Conventions, touching the premises, for the final ratification of the President of the United States by and with the advice and consent of the Senate thereof, if such advice and consent be given" (the original power, also dated December 9, 1854, is with the instruction last cited). Perhaps it was thought that Eames, without his full power, might negotiate for a declaration, or, with it, for a convention; but this, even if to be implied, was not expressed; and Eames, with some reason, looked to the power for his authority and deemed it limited to the signing of an instrument, whatever its form, subject to ratification.

When the second of the two instructions quoted was written (December 9, 1854), Eames was in the United States on leave; and he did not resume his duties at Caracas until January 29, 1855 (D.S., 10 Despatches, Venezuela, No. 6, November 9, 1854, and No. 7, February 14, 1855).

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Following the inauguration of President José Tadeo Monágas (January 31) and the formation of a ministry (February 8), Eames, on February 14, 1855, wrote a note to the Minister of Foreign Affairs, Francisco Aranda, referring to an interchange of views on the day previous and transmitting the project of a declaration; the note was in part a paraphrase of the instruction of October 18, 1854; it included an unwarranted statement to the effect that "some" European Governments [1] had already acceded to the proposition "to enter into Treaty arrangements for the recognition of these principles" of the convention with Russia of July 22, 1854; and the proposal made was in these terms (*ibid.*, No. 8, March 29, 1855, enclosure):

> Should the Government of Venezuela be disposed to meet the views of the President of the United States and to accede to the Declaration now presented, the undersigned . . . is duly empowered and prepared to sign and exchange the same on the part of the United States with the Plenipotentiary for such purpose of the Venezuelan Government, without delay.

The full power of the Plenipotentiary of Venezuela was issued on March 5, 1855, of this tenor (translation; original in D.S., Legation Archives, Venezuela, Instructions, 1854–57, with instruction No. 10, of December 9, 1854):

> José Tadeo Monágas, President of the Republic of Venezuela
>
> To all who may see these presents, Greeting
>
> Whereas, the Honorable Charles Eames, Minister Resident of the United States, having proposed that Venezuela, in order to enjoy the benefits thereof, accede by means of a formal declaration to the treaty regarding the rights of neutrals which the United States signed with Russia on July 22, 1854, the Government has decided so to do.
>
> Now, therefore, and confiding in the erudition, zeal, and other gifts of Licenciado Francisco Aranda, Minister of State in the Departments of the Interior, Justice, and Foreign Relations, we have decided to confer upon him, and by these presents do confer upon him, full powers on behalf of Venezuela to negotiate, conclude, and sign the aforesaid declaration with the Plenipotentiary named to that end by the United States, reserving the approval thereof to the Congress of the Republic.
>
> Given, signed, sealed with the seal of the Executive Power, and countersigned by the Secretary of State in the Department of the Treasury, at Caracas on March 5, 1855, the twenty-sixth year of the law and forty-fifth of independence.
>
> JOSÉ T. MONÁGAS
>
> The Secretary of the Treasury:
> JACINTO GUTIÉRREZ.

A careful formal record, in the two languages, of the three conferences of the Plenipotentiaries (March 5, 6, and 10, 1855) resulting in the signing of the declaration, was made; excerpts from the English version of the original protocol follow (D.S., 10 Despatches, Venezuela, No. 8, March 29, 1855, enclosure):

[1] When Eames wrote this, no government, European or other (apart from Russia), had "acceded" to the proposals of the United States, except the Two Sicilies by the convention of January 13, 1855 (Document 171); and Eames could not possibly have then been aware of the signing of that convention.

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On the 5th of March 1855. Hon. Charles Eames Minister Resident of the United States and the Plenipotentiary to negociate, conclude and sign a Declaration respecting Neutral Rights, and Hon. Francisco Aranda Secretary of State in the Departments of the Interior, Justice and Foreign Relations, and Special Plenipotentiary on the part of Venezuela for that purpose having communicated their respective Full Powers found in good and due form, proceeded to exchange the same.

Mr Eames then said: that the United States had concluded a Treaty with His Majesty the Emperor of all the Russias on the 22d of July 1854 . . . : that . . . he now presented the Projet of the declaration which accompanied his note of 14th February and which is as follows:

. . . . . .

Mr Aranda answered: that Venezuela had adopted the first principle in nearly all the treaties concluded . . . : that the second is in conformity with the Law of nations . . . : that . . . the Republic consented to adopt them: that he would examine the Projet of the Declaration, and would communicate his ideas upon it to Mr Eames in their next interview.

. . . . . .

On the 6th of March the Plenipotentiaries met. . . .

Mr Aranda then spoke to the following effect: that he had meditated the projet of the declaration, and that it occurred to him to observe that as the articles of contraband had not been specified in the Projet of the declaration he deemed it proper to do it in the protocol, in order to avoid any doubt that might arise on this point, as it is well known that all nations do not follow the same rule in the qualification of such articles, and that the list of said articles, has undergone frequent changes in lapse of time and through the progress of industry: he therefore proposed to express herein that the articles of contraband are those that are specified in article 17th of the late Treaty that existed between Venezuela and the United States subject however, to what may be agreed upon in this respect, in the new Treaty of Commerce which is soon to occupy the attention of the negociators.[1] Mr Eames assented to this, and said article 17th is therefore copied here as follows.

. . . . . .

[1] The "late Treaty" between the United States and Venezuela was that of January 20, 1836 (Document 80). Pursuant to Article 34 thereof, that treaty, "in all its parts relative to commerce and navigation", had terminated on January 3, 1851, following notice given one year prior thereto by the Government of Venezuela (D.S., 1 Instructions, Venezuela, 82–85, January 5, 1850; printed in part in Manning, Diplomatic Correspondence of the United States, 1831–1860, XII, 476–77). On September 20, 1854, a Treaty of Peace, Friendship, Navigation, and Commerce between the two countries was signed at Caracas. While the text of the treaty of 1854 is not available, it appears to have been written in very much the same terms as the treaty of 1836 (see D.S., Legation Archives, Venezuela, Instructions, 1854–57, No. 2, March 8, 1854, and enclosure; 10 Despatches, Venezuela, No. 4, September 20, 1854; the instruction and despatch are printed, each in part, in Manning, *op. cit.*, XII, 481–82, 624–25). The treaty of 1854 was disapproved at Washington because of supposed constitutional objections to Article 25 thereof, which was of the same wording as Article 25 of the treaty of 1836 (D.S., 1 Notes to the Venezuelan Legation, 33–36, November 3 and 15, 1854; 1 Instructions, Venezuela, 115–17, December 9, 1854; printed in Manning, *op. cit.*, XII, 483–86); so the treaty of 1854 was not submitted to the Senate and did not go into force. The next treaty to be signed at Caracas was that of July 10, 1856 (D.S., Unperfected U3). This treaty of 1856 was duly submitted to the Senate, where it was accepted subject to an amendment striking out from Article 28 the words "or the emission of forged papers" (Executive Journal, X, 231–32); and the treaty of 1856 did not go into force. In lieu thereof, and because of the Senate amendment, another treaty was signed at Caracas on July 18, 1858 (D.S., Unperfected V3), the clauses of which were exactly the same as those of the treaty of 1856 except for the omission of the words proposed to be deleted by the Senate; but the treaty of 1858 was not submitted to the Senate

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Mr Aranda added: that the last clause of the second paragraph of the first article of the Declaration, which says:

"They engage to apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them, on their part, as permanent and immutable;" refers evidently to the two principles admitted, while by the place which it occupies in continuation of the second paragraph, it may appear to relate to that second paragraph only; it would therefore be desirable to make a third *paragraph* out of said clause, in order to avoid any doubt in regard to its meaning.[1] Mr Eames assented also to this remark; and therefore the first article of the declaration remains in this form as follows:

. . . . . .

Mr Aranda remarked also: that as the Declaration conveys that its principles shall be applied to the Powers which agree to adopt them as permanent and immutable, he understands that those Nations which may not accept them shall not enjoy the benefits thereof: that for example if the United States or Russia which admit the principles should be at war with Spain, which should not have accepted them, her goods, found by her enemy on board the vessels of that one of the two former Powers which should remain neutral, would not be free; for otherwise Spain in confiscating in the same case the goods of her enemy, under the flag of the neutral, would have a considerable advantage over her enemy: and besides, this limitation is found in article 15th of the late Treaty [2] between Venezuela and the United States, that establishes the principle of the protection of the flag.

To this Mr Eames answered: that according to his instructions, and considering that the Treaty itself refers to the possibility of an ulterior agreement in relation to the application and extension of these principles, he was not prepared to decide this point and would have to submit it to the consideration of his Government, offering when he shall receive its solution of the question to communicate the same to the Government of Venezuela for its consideration. And the point remains therefore subject to future decision, but without prejudice to the full force and effect of the present signature and exchange of the Declaration. This point being agreed upon, Mr Aranda observed that at the close of the Projet of the Declaration it is said that the respective Plenipotentiaries, have signed and *exchanged it:* that he wished to know the force of this word in the present case, it being evident that according to the common rule observed in Treaties, their *exchange* is an act posterior, and consequent to their approbation, which includes also the exchange of their ratifications, while it is understood that the approbation and ratification of the present Convention is reserved to both Governments. Mr Eames replied satisfactorily to this remark saying: that the word *"exchanged"* in the Declaration here signifies the reciprocal communication in due form by the Plenipotentiaries of the ideas and purposes which on the part of their respective Governments, they jointly *declare*—that such "exchange" by the Plenipotentiaries of their Joint-Declaration in advance of its final ratification appears to be rendered proper, if not necessary by the form of the Instrument itself in order to complete the Joint Act of the Plenipotentiaries, and in order that each Government may have before it, the said Joint Act to be finally accepted and ratified by the competent authority of both Governments if found satisfactory and sufficient to accomplish all the ends which a formal Treaty between the two Governments embracing the same stipulations would be intended to obtain; that the present *"exchange"* of the Declaration therefore, does not constitute, nor supersede the final ratifications nor the exchange thereof, of which

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and did not go into force. The fourth treaty to be signed at Caracas during this period was that of August 27, 1860 (12 Statutes at Large, 1143–61), which did go into force; and the wording of the treaty of 1860, except for Article 2, the final clause of Article 27, and immaterial changes of a word or two here and there, is the same as that of the treaty of 1858.

[1] The point here made, while minor, is of interest. Cf. the paragraphing of Article 1 of the Venezuelan declaration with that of Article 1 of the convention with Russia. There is a similar change in the declaration of Hawaii of March 26, 1855, but not in the declaration of Nicaragua of June 9, 1855.

[2] Of January 20, 1836 (Document 80).

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M[r] Aranda has spoken, such final and future ratifications being expressly provided for in the respective Full Powers of both Plenipotentiaries, neither of whom is now empowered to exchange such final ratifications, the exchange of which must therefore take place hereafter when the consent of both Governments thereto shall have been given and made known reciprocally in proper form.

No other observation having been made by either party, it was resolved that the Declaration should be fairly copied in order to sign it on the 10th instant substituting the word "triplicate" in place of "duplicate" at the end, on M[r] Eames' suggestion, that three copies were required, one for his Government, one for the Legation, and one for the Government of Venezuela.

From the relevant passages of the protocol for March 6, it is clear beyond any possible shadow of doubt that the declaration was, and was well understood to be, subject to ratification and subsequent exchange of ratifications; and the covering despatch of Eames refers expressly to the point in these words:

The Protocol in the last place manifests the doubt entertained by the Venezuelan Plenipotentiary in regard to the word "exchanged" in the final clause of the Declaration and the reasons upon which he desired to omit it. He yielded however to the views expressed by me, as set down in the Protocol and to the Precedents of similar declarations which I cited to him particularly those recorded at page 200 et. seq. of the 2[d] volume of Martens Diplomatic Guide.[1] With these citations however I did not think it necessary to encumber the Protocol.

In the annual message of President Pierce of December 31, 1855 (Richardson, V, 337), mention is made of the declaration of Hawaii of March 26, 1855, and the declaration of Nicaragua of June 9, 1855; but nothing is there said regarding this declaration of Venezuela, for the reason, doubtless, that further proceedings were then awaited, particularly approval by the Congress of Venezuela. Such approval was thus reported by Eames as having been completed on February 25, 1856 (D.S., 10 Despatches, Venezuela, No. 19, February 23, 1856, postscript of February 25):

I reopen this Despatch in order to have the satisfaction of at once informing the Department that the Joint Declaration respecting Neutral Rights signed and exchanged by the respective Plenipotentiaries of the United States and of this Government and transmitted to you in my No 8., has this day received its final reading and approval in the Chamber of Representatives, having already been finally approved by the Senate. The consent of this Government thereto, in all its Departments is now therefore complete, and on its part only the Exchange of Ratifications is wanting.

That despatch of Eames was received at the Department of State on March 22, 1856; and it seems probable that the declaration of Venezuela was one of the four instruments referred to in the "second Marcy note" of July 28, 1856, the text of which is printed below (see the discussion of the point in the editorial notes to the declaration of Hawaii of March 26, 1855, under the heading "The Declaration").

It may have been expected, when Marcy wrote, that the necessary steps would be taken to bring into force the declaration of Venezuela; but, for reasons which are now obscure, the declaration was not

[1] Probably either the Paris edition of 1837 or the similar Brussels edition of 1838; but pp. 183–86 thereof seem more in point.

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ratified by the United States,[1] and there was consequently no exchange; so the declaration failed to go into force. Perhaps the inaction of this Government is to be attributed merely to oversight, for no mention of the declaration has been found in any instruction of a date later than that of the instrument itself, or in any despatch subsequent to that last quoted.

In the report made to the Congress of Venezuela by the Minister of Foreign Affairs, Jacinto Gutiérrez, on January 20, 1857, is the following (Exposicion que dirige al Congreso de Venezuela el Secretario de Relaciones Exteriores en 1857, p. 18, translation):

> At the same time [2] they [the Congress] approved the principles regarding rights of neutrals exchanged between Venezuela and the United States in 1855 by means of a declaration. When this declaration was returned to the Ministry, the American Legation was informed of the fact and of the readiness of the Government to proceed to its ratification and exchange. This has not yet been effected because the corresponding papers have not come from Washington.

So far as has been noticed, the declaration has not heretofore been printed in the United States; and it is not contained in Coleccion de tratados publicos de Venezuela, which was published at Caracas in 1884. The Spanish version thereof, however, is printed in the more recent and official collection, Tratados públicos y acuerdos internacionales de Venezuela, I, 198–99, with a notation [3] to the effect that the declaration was not subject to ratification and was exchanged when signed. This conclusion, however, is to be deemed an inference from the words of the declaration itself, which, as has been seen, are limited by the protocol of March 6, 1855, printed above.

It is to be added that instructions of Marcy dated July 14 and August 29, 1856 (see D.S., 1 Instructions, Venezuela, 142, 149, Nos. 32 and 38; 17 Instructions, Mexico, 73–77, 89–92), regarding the Declaration of Paris, like those of the same period to certain other missions (those to Lima are printed in the editorial notes to the convention with Peru of July 22, 1856), were sent to Eames; only the earlier (No. 32) of the two instructions was received at Caracas in due course, and a duplicate of the later (No. 38) was not forwarded until February 3, 1857 (see D.S., 10 Despatches, Venezuela, No. 26, December 5, 1856; 1 Instructions, Venezuela, 160, February 3, 1857); but even before the instruction of July 14, 1856, was written at Washington, the Declaration of Paris was the subject of discussion by Eames and the Minister of Foreign Affairs of Venezuela, Jacinto Gutiérrez, in connection with the Treaty [4] of Amity, Commerce,

[1] Submission to the Senate might have been deemed necessary because of the clauses of the protocol of March 6, 1855, regarding contraband.

[2] This refers to the approval by the Venezuelan Congress on February 28, 1856, of the extradition convention between France and Venezuela which was signed at Caracas on March 23, 1853 (see Coleccion de tratados publicos de Venezuela, 79–81).

[3] It reads as follows: "(Sin ratificación.—Canjeada en el mismo acto de la firma)".

In volume 3 of the same collection is a list of international acts in force on May 1, 1927. This includes (p. 603) the declaration of March 10, 1855 (the date being there given erroneously as *1885*); but see the qualifying footnote to that list at p. 601.

[4] This treaty, which did not go into force, is D.S., Unperfected U3.

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and Navigation, and for the Surrender of Fugitive Criminals, which they signed on July 10, 1856 (see D.S., 10 Despatches, Venezuela, No. 21, of that date; in part in Manning, *op. cit.*, XII, 650). On September 3, 1856, the Government of Venezuela declined to adhere to the Declaration of Paris, for reasons somewhat similar to those put forward by Marcy (see the above-cited report of the Minister of Foreign Affairs of Venezuela dated January 20, 1857, pp. 18–19, 43–47; D.S., 10 Despatches, Venezuela, No. 28, December 23, 1856, and enclosures; the despatch and one of the two enclosures thereto are printed in Manning, *op. cit.*, XII, 654–56, 661).

The Unperfected Convention with Ecuador of April 9, 1856

Under date of October 18, 1854, an instruction regarding a declaration on the subject of neutral rights, similar to those of about the same time to various other missions, was sent to Philo White, Minister Resident to Ecuador (see D.S., 1 Instructions, Ecuador, 65; 15 Instructions, American States, 227–28; for the wording of the instruction, see that of the same date to Charles Eames, Minister Resident to Venezuela, printed above under the heading "The Unperfected Declaration of Venezuela of March 10, 1855"). More than a year later a full power of December 3, 1855, to negotiate a convention, was sent with an instruction of the same date (D.S., 1 Instructions, Ecuador, 75–76; 4 Credences, 127). While the first note of White on the subject of neutral rights was written at Quito on December 26, 1854 (D.S., 3 Despatches, Ecuador, No. 43, January 17, 1855, enclosure C; the despatch, in part, and the enclosure, are in Manning, *op. cit.*, VI, 348–50), some fifteen months elapsed before the negotiations resulted in the signing of a convention on April 9, 1856. The reasons for the delay are explained in White's despatches of the period (D.S., 3 Despatches, Ecuador, *passim;* see Manning, *op. cit.*, VI, 351–72, *passim*), and particularly in two of April 16, 1856 (D.S., 3 Despatches, Ecuador, No. 73, and No. 3 to the President transmitting the convention; and see also the enclosures to No. 73; for the despatch to the President and, in large part, that to Marcy, with one of the enclosures thereto, see Manning, *op. cit.*, VI, 372–79).

The English version of the convention, which was written in the two languages, the Spanish on the left pages, follows (original in D.S., 3 Despatches, Ecuador, bound out of place between enclosures D and E to despatch No. 62, of October 17, 1855):

The United States of America and the Republic of Ecuador, equally animated with a desire to establish and maintain, upon a permanent basis, the relations of friendship and good understanding which have at all times so happily subsisted between the two nations, as also between their respective people, and which shall confer reciprocal benefits upon both, have agreed to perpetuate, by means of a formal treaty, the principles of the rights of neutrals at sea, which they recognize as indispensable conditions of all freedom of navigation and maritime trade:

For this purpose, the President of the United States has conferred full powers on Philo White, Minister Resident of that nation in Ecuador, and the President of the Republic of Ecuador has conferred like powers on the Hon. Francisco Pablo Ycaza, Minister of Finance of that Republic: Who, after having exchanged their respective full powers, found in good and due form, have concluded and signed the following articles:

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ARTICLE 1.

The United States of America, and the Republic of Ecuador, recognize as permanent and immutable the following principles, to wit:

1st: That "free ships make free goods",—that is to say, that the effects or goods belonging to citizens or subjects of a Power or State at war, are exempt from capture or confiscation when found on board neutral vessels, with the exception of articles contraband of war:

2d: That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband of war: They engage to apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them on their part as permanent and immutable.

ARTICLE 2.

The two high contracting parties reserve themselves to come to an ulterior understanding as circumstances may require, with regard to the extension to be given, if there be any cause for it, to the principles laid down in the 1st Article: But they declare from this time, that they will be governed by those principles, as a rule, whenever a question may arise for judging of the rights of neutrality,—the manner and form of carrying out the intentions of this Article, being made to harmonize with the stipulations of the Treaty [1] of friendship and commerce already existing between the two countries, and which bears date the 13th day of June, A.D. 1839.

ARTICLE 3.

It is agreed by the high contracting parties, that all nations which may acknowledge and accede to the rules laid down in the 1st Article of this Convention, by a formal declaration stipulating to observe them on their part, shall enjoy the rights resulting from such accession in as full and ample a manner as they shall be enjoyed and observed by the two Powers signing this Convention: They shall mutually communicate to each other the results of the steps which may be taken on the subject.

ARTICLE 4.

In like manner the two high contracting parties declare, that they will not acknowledge as legitimate belligerents, armed ships or vessels that shall cruize without being provided with the necessary commission or other papers, emanating from the authorities of the country whose flag they may use, such commission or papers being deemed requisite in determining the legality of the cruize: Consequently, armed vessels that may be found cruizing without such credentials, will be considered piratical in their character and purposes.

ARTICLE 5.

The present Convention shall be approved and ratified by the President of the United States, with the advice and consent of the Senate of the same, and by the President of the Republic of Ecuador, with the approbation of the Congress of that nation; and the exchange of these ratifications shall take place at Quito, within eight months, counting from this day, or sooner if possible.

In faith whereof, we, the Plenipotentiaries of the United States and of Ecuador, have signed this Convention, and affixed to it our respective seals, at Quito, the ninth day of April, in the year One Thousand Eight Hundred and Fifty-six.

PHILO WHITE, [Seal]
F. P. ICAZA. [Seal]

[1] That treaty of June 13, 1839 (Document 90), "in all its parts relative to commerce and navigation" (Article 35, clause 1), terminated on August 25, 1892, pursuant to notice given by the Government of Ecuador. On the same date the Naturalization Treaty of May 6, 1872 (18 Statutes at Large, pt. 3, 753–55), also terminated (D.S., 2 Notes from the Ecuadoran Legation, July 17 and September 26, 1891; 7 Credences, 93–94, August 28, 1891).

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White's despatch of April 16, 1856, to the Secretary of State, and that of the same date to the President (both cited previously) with the convention, were received at the Department of State respectively on the following May 30 and June 2. With this the record ends; no later mention of the convention has been found in instructions, despatches, or elsewhere; the convention was not submitted to the Senate,[1] and it failed to go into force. The reason for inaction was perhaps disapproval, perhaps neglect, or perhaps something else; there is now no basis for opinion.

It is to be observed that there are only two material textual differences between the Ecuador convention and that with Russia; these are added clauses, desired by the Government of Ecuador; one of the two additions is the final phrase of Article 2, referring to the 1839 treaty with Ecuador (Document 90); the other is Article 4.

For the decree of the Congress of Ecuador promulgated December 6, 1856, adhering to the Declaration of Paris, see 48 British and Foreign State Papers, 144–45.

The Unperfected Treaty with Chile of May 27, 1856

Negotiations with the Government of Chile on the subject of neutral rights were initiated pursuant to an instruction of September 9, 1854, from Secretary of State Marcy to David A. Starkweather, Minister to Chile (D.S., 15 Instructions, Chile, 107), similar in tenor to that of the same date to James Gadsen which is printed above under the heading "The Unperfected Convention with Mexico of January 8, 1855". Starkweather had been appointed on June 29, 1854, and had presented his credentials on the following November 22 (D.S., 11 Despatches, Chile, No. 1, November 25, 1854); he had been empowered to negotiate a treaty of commerce and extradition (D.S., 4 Credences, 78, July 24, 1854) to replace the treaty of May 16, 1832, and September 1, 1833 (Document 73), which, under Article 31 thereof, had terminated "in all the parts relating to commerce and navigation" on January 20, 1850, pursuant to notice given by the Chilean Government (D.S., 1 Notes from the Chilean Legation, January 19, 1849; 6 Notes to the Chilean Legation, 10–11, February 27, 1849). After some delay the Chilean Plenipotentiary, Silvestre Ochagavia, was named; and in the project presented by Starkweather he embodied the articles of the convention with Russia (D.S., 11 Despatches, Chile, No. 18, December 14, 1855). The negotiations resulted in the signing on May 27, 1856, of a Treaty of Friendship, Commerce, Navigation, and Extradition of thirty-four articles. The English version of Article 16 of that treaty reads thus (D.S., Unperfected G):

Article 16.

The citizens of the United States of America, and the Republic of Chile may sail with their vessels, with entire freedom and security, from any port, to the

[1] The first session of the 34th Congress was then holding; that session had commenced on December 3, 1855, and continued until August 18, 1856; and there was a second session from August 21 to 30, 1856.

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ports or places of those who now are or hereafter shall be, enemies of either of the contracting parties, whoever may be the owners of the merchandize laden in the said vessels. The same citizens shall also be allowed to sail with their vessels, and to carry and traffic with their merchandize from the ports and places of the enemies of both parties, or of one of them, without any hindrance, not only to neutral ports and places, but also from one port belonging to an enemy to another enemy's port, whether they be under the jurisdiction of one power or under several, excepting only such places or ports as may, at the time be besieged or blockaded.

And to avoid all doubt in this particular, it is declared that those places only shall be considered besieged or blockaded, which are actually invested or attacked by a force capable of preventing the entry of the neutral.

The two high contracting parties adopt, in their commercial relations, the following principles:

1st That free ships make free-goods, that is to say, that the effects or goods belonging to the subjects or citizens of a Power or State at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

2nd That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband of war. The two high contracting parties will apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them.

The treaty with Chile of May 27, 1856, was ratified by President Buchanan on April 15, 1857, subject to certain amendments proposed by the Senate on March 10 (see Executive Journal, X, 232–33); but those amendments were not acceptable to the Government of Chile, and the treaty did not go into force (D.S., 11 Despatches, Chile, No. 30, August 15, 1857, and enclosure of August 10; No. 18, June 15, 1858, and enclosed broadside print of the annual message of the President of Chile, Manuel Montt, of June 1, 1858).

The Government of Chile, by note of the Minister of Foreign Affairs to the Chargé d'Affaires of France dated August 13, 1856, accepted in principle the Declaration of Paris (48 British and Foreign State Papers, 139–40); but this was not, as various writers have supposed, an adherence to the Declaration of Paris (see Recopilación de tratados y convenciones celebrados entre la República de Chile y las potencias extranjeras, I, 252–54, quoting and commenting on the note to the British Chargé d'Affaires dated August 14, 1856).

The Declaration of Paris

The Declaration of Paris was signed on April 16, 1856, by Plenipotentiaries of Austria, France, Great Britian, Prussia, Russia, Sardinia, and Turkey. Its text, in French, as officially communicated to this Government by the French Minister at Washington, follows, together with a translation (D.S., 16 Notes from the French Legation):

Congrès de Paris	[Translation] Congress of Paris
Déclaration	Declaration
Les plénipotentiaires qui ont signé le traité de Paris[1] du trente mars mil huit cent cinquante six réunis en Conférence, Considérant:	The Plenipotentiaries who signed the Treaty of Paris[1] of March 30, 1856, having met in conference, considering:

[1] Text in 46 British and Foreign State Papers, 8–18.

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Que le droit maritime en temps de guerre a été pendant longtemps l'objet de contestations regrettables;

Que l'incertitude du droit et des devoirs, en pareille matière, donne lieu entre les neutres et les belligérants a des divergences d'opinion qui peuvent faire naitre des difficultés sérieuses et même des conflits;

Qu'il y a avantage par conséquent a établir une doctrine uniforme sur un point aussi important;

Que les plénipotentiaires assemblés au Congrès de Paris ne sauraient mieux répondre aux intentions dont leurs gouvernements sont animés qu'en cherchant a introduire dans les rapports internationaux des principes fixes a cet égard;

Dùment autorisés les susdits Plénipotentiaires sont convenus de se concerter sur les moyens d'atteindre ce but, et, etant tombés d'accord, ont arrêté la déclaration solennelle ci après

1°) La Course est et demeure abolie;

2°) Le pavillon neutre couvre la marchandise ennemie a l'exception de la contrebande de guerre

3° La marchandise neutre a l'exception de la Contrebande de guerre, nest pas saisissable sous pavillon ennemi.

4°) Les blocus pour être obligatoires doivent être effectifs, c'est a dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi

Les gouvernements des plénipotentiaires soussignés s'engagent a porter cette déclaration a la connaissance des Etats qui n'ont pas été appelés a participer au Congrès de Paris et a les inviter a y accèder.

Convaincus que les maximes qu'ils Viennent de proclamer, ne sauraient etre accueillies qu'avec gratitude par le monde entier, les plénipotentiaires Soussignés ne doutent pas que les efforts de leurs gouvernements pour en généraliser l'adoption, ne soient couronnés d'un plein succès

La présente déclaration n'est et ne sera obligatoire qu'entre les puissances qui y ont ou qui y auront accèdé

That maritime law in time of war has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter, gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties and even conflicts;

That, consequently, it is advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled at the Congress of Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles in this respect;

The above-mentioned Plenipotentiaries, being duly authorized, have agreed to concert among themselves regarding the means of attaining this end; and, having come to agreement, have adopted the following solemn declaration:

1. Privateering is and remains abolished.

2. The neutral flag covers enemy goods, with the exception of contraband of war.

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy flag;

4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries undertake to bring this declaration to the knowledge of the States which have not been called to take part in the Congress of Paris, and to invite them to accede thereto.

Convinced that the maxims which they have just proclaimed cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present declaration is not and shall not be binding except between those powers which have acceded or which shall accede thereto.

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Fait a Paris, le seize avril, mil huit cent cinquante six	Done at Paris the sixteenth of April one thousand eight hundred and fifty-six.
Suivent les Signatures des plenipotentiaires	The signatures of the Plenipotentiaries follow.

It is to be observed that the foregoing text of the declaration, besides omitting the signatures of the Plenipotentiaries, differs in punctuation and slightly otherwise from that printed (from the certified copy in the Record Office) in British Year Book of International Law, 1927, 1–2 (cf. 46 British and Foreign State Papers, 26–27).

Official communication of the Declaration of Paris to this Government was made on June 30, 1856 (D.S., file 116.3/4057, despatch from Paris No. 1187, of October 29, 1937, and enclosure); these four papers (now, with translations thereof, in D.S., 16 Notes from the French Legation, following a note of May 31, 1856, and in the order stated) were then delivered to the Secretary of State by the French Minister: (*a*) the concluding passages of Protocol No. 23, of April 14, 1856 (see the last two paragraphs thereof in 46 British and Foreign State Papers, 135–36), with an excerpt from an instruction commenting thereon from Comte Walewski to Comte de Sartiges dated May 1856; (*b*) an extract from Protocol No. 24, of April 16, 1856 (*ibid.*, 137, the paragraph beginning "Sur la proposition"); (*c*) the declaration; and (*d*) an excerpt from an instruction from Walewski to Sartiges dated May 1856 regarding the declaration; this last paper, which follows in translation, was read by Sartiges to Marcy at the time (cited despatch of October 29, 1937):

The Plenipotentiaries gathered at the Congress of Paris came to agreement on the terms of a declaration intended to fix the principles of maritime law as regards neutrals during war. I have the honor to send you herewith a copy of this act, which fully responds to the tendency of our times and puts an end, at the same time, to the useless calamities which a usage equally condemned by reason and humanity added to those that necessarily arise from war.

The Congress has recognized that in order to be complete, its work must meet with the assent of all the maritime powers, because it can be mutually binding only on the governments which shall have acceded to it. On this ground we attach a special value to the adherence of the United States, which we are sure will not desire to remain outside of a concert marking a new and essential progress in international relations.

The determination of the Congress of Paris defines the purpose which it is intended to accomplish. The rights of neutrals, diversely interpreted, have been, down to the last war, a cause of regrettable conflicts, and privateering caused to the commerce and navigation of non-belligerent states an injury all the more grave because it was the source of the most deplorable excesses.

These, Count, are the eventualities which we are happy for our part to seek to avert, and we are convinced that the cooperation of the United States will not fail us in a question entirely worthy of the philanthropic disposition of the American people and one which is of interest at the same time, in so high a degree, to the development and the security of commercial transactions.

The Plenipotentiaries at the Congress had, as you have seen in Protocol No. 24,[1] undertaken in the names of their respective Governments not to enter in the future into any arrangement regarding the application of maritime law in time of war without stipulating the strict observance of the four points decided

[1] Cited above.

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by the declaration; the adherence requested by us from all governments not represented at the Conference at Paris can, therefore, apply only to all the principles expressed in the said declaration, which are indivisible (ne saurait par conséquent s'appliquer qu'aux seuls principes émis dans ladite déclaration qui sont indivisibles).

The history of the Declaration of Paris by Sir Francis Piggott (The Declaration of Paris, 1856; hereinafter cited as "Piggott") was published in 1919; further highly interesting and important material has since been examined and is learnedly treated by H. W. Malkin in his monograph, "The Inner History of the Declaration of Paris" (British Year Book of International Law, 1927, 1–44; hereinafter cited as "Malkin").

While no letters of marque were issued during the Crimean War, the subject of privateering was earnestly considered and discussed at the time (see Malkin, 18–21; Thomas, "Russo-American Relations, 1815–1867", 113–15, in Johns Hopkins University Studies in Historical and Political Science, XLVIII; Golder, "Russian-American Relations during the Crimean War", 465–71, in American Historical Review, XXXI, 462–76). Great Britain favored the abolition of privateering for the future; the contrary view of the United States had been publicly stated in the annual message of President Pierce of December 4, 1854 (quoted above); and it appears that it was because of that difference of policy that the program of Marcy in 1854 for a network of treaties embodying the principle of "free ships free goods" so largely failed. A letter of Lord Clarendon to Lord Palmerston, written from Paris on April 6, 1856 (quoted in Malkin, 26), discloses that various powers had consulted the Government of Great Britain regarding the proposal of Marcy and that it had been suggested to them not to agree thereto except on condition that privateering was given up (see the Prussian note of November 22, 1854, quoted above; the answer of France by the note of Walewski of December 18, 1855, was to the same effect as that of Prussia; D.S., 38 Despatches, France, No. 110, January 15, 1856, enclosure). The words of the British suggestion to one Government (Portugal) are quoted in Piggott, 201, footnote.

So when the question came before the Congress of Paris, it appeared to the British Government that the rule of "free ships free goods" could no longer be opposed (in view of its acceptance during the Crimean War) and that the wiser course was to admit that rule for the future, but coupled with the abolition of privateering (see Malkin, 25–37, including the views of the Cabinet). Hence rules 1 and 2 of the Declaration of Paris (rule 3 was British practice and deemed by Marcy to be "now generally recognized by the law of nations"; rule 4 was not controversial), the limiting of the applicability of the declaration to the parties thereto, the indivisibility of its four rules, and the engagement not to enter into future agreements not embodying the four rules (*ibid.*, and see particularly the letter of Palmerston to Clarendon dated April 13, 1856, printed also in Piggott, 122–23; for the relevant discussions recorded in protocols of the Congress, Nos.

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22, 23, and 24, of April 8, 14, and 16, 1856, see 46 British and Foreign State Papers, 125–38).

The first news [1] of the Declaration of Paris was received at the Department of State on May 17, 1856, by the despatch of John Y. Mason, American Minister at Paris, dated April 25, reporting a conversation had on that day with the Minister of Foreign Affairs, Comte Walewski; from that despatch these paragraphs are excerpted (D.S., 38 Despatches, France, No. 140):

> As soon as I was seated, he [Comte Walewski] remarked, that the proceedings of the Congress were confidential, but this injunction would be removed, as soon as the ratifications were exchanged, which ceremony would certainly take place in two or three days, and he therefore felt at liberty to communicate to me, that in its last sittings, the Representatives of the several powers had united in protocols declaratory of the rights of neutrals, in regard to which we had been in correspondence;—that the Declaration contained four points:—
>
> 1. That privateering should be abolished;
> 2. That the flag protects the cargo, or free ships make free goods;
> 3. That neutral property found in enemy's vessels captured, was not liable to condemnation;
> 4. That legal Blockade required the actual presence of an armed force sufficient to enforce it;—
>
> and that the Emperor's Government earnestly desired that the United States would accede to the conventional agreement.
>
> He explained in answer to enquiries, that the Declaration only bound those who were, or should voluntarily become, parties to it. That there was no stipulation or purpose to enforce it against those who might not choose to agree to it, and that existing conventions are not affected by it. That it was presented by France, in order to secure the recognition by all the Great Powers represented in the Congress, of the principles involved concerning neutral rights, as to which, different views had been acted on, especially by England. That in regard to the belligerent right of issuing letters of marque, he and the Congress were aware of the views of the United States, as communicated to Prussia; but that he hoped, that these opinions were not unchangeable in the United States, and therefore France earnestly desired to secure the concurrence of my country. He added, that the Emperor had anticipated the departure of Count de Sartiges, by a month, to make explanations to the Government at Washington, and the principal object of his inviting me to this interview, was to make to me this communication, and to ask me, to make known to you, his earnest assurance, that the proposition had been made and adopted,—not only without any unfriendly purpose or feeling towards the United States, but with a sincere desire that it would not be considered as disagreeable to them.

[1] So far as there is any record in the Department of State. The French Minister at Washington, Comte de Sartiges, who had been absent for several months in France, resumed his functions in Washington on May 1, 1856 (despatch from Paris No. 1187, of October 29, 1937, and enclosure; D.S., file 116.3/4057). According to the quoted despatch of Mason, the departure of Sartiges from France had been anticipated "by a month, to make explanations to the Government at Washington". So it is possible that there were conversations between Marcy and Sartiges even before the receipt of Mason's despatch. Whether this is so or not, the declaration was not textually and officially communicated by Sartiges until June 30, almost two months after his return to Washington.

On April 26 George M. Dallas, American Minister at London, had a conversation, his first, with the Earl of Clarendon, Secretary of State for Foreign Affairs, shortly after the return of that statesman from the Congress of Paris; but while the proceedings of the Congress were then referred to, there was no mention of the declaration. The despatch of Dallas reporting the interview was received on May 13 (D.S., 69 Despatches, Great Britain, No. 7, April 29, 1856).

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I remarked, that I had no claim to know what was going on in the Congress, and no right or authority to participate in its deliberations;—that I appreciated the importance of the solemn recognition of the great principles involved in the three last mentioned points,—especially as the circumstances vindicated the correctness of an opinion, which I had more than once expressed to my Government, that the Imperial Government would never recede from its assertion of the equal rights of nations on the seas. Yet, as the principles and details of this proposition were actually the subject of negotiation between us, I would have been gratified, if his Excellency had been pleased to enquire of me, whether my country had any modification to suggest, to the proposed abolition of a belligerent right, which it was known, under her system of government, and with her views of foreign and domestic policy, she valued very highly;—that with a larger mercantile marine than any other nation,—a greater number of merchant vessels, and of citizens following the sea,—and with a comparatively small navy,—I apprehended that it could not be possible, that the Federal Government would abandon the acknowledged right of employing these men and these ships in waging war, if war should unhappily arise. It would be a declaration, that these ships, to which their country's navy could not give adequate protection at sea, if their enemy had superior naval strength, should lie uselessly in port to rot, and their crews be thrown out of employment, idly to witness the progress of a war, in which they would be ready and willing to render efficient service. That the Government of the United States had indicated a disposition to go a step beyond the declaration adopted by the Congress, and consent to the abrogation of the right of a belligerent to issue letters of marque, provided the Great Powers would agree, that belligerent rights should be still further curtailed, by declaring that vessels and their cargoes, the property of private citizens or subjects of a country at war, should not be liable to capture by the armed public cruizers of the enemy;—that this immunity was of course to be forfeited, if such vessel undertook to carry articles contraband of war, or to break a lawful blockade. I informed the Minister, that I had brought with me, to submit to him, your letter instructing me to decline the proposition contained in his note of December last, which at his request, I handed to him, and he carefully read the despatch and its enclosures.[1] I called his attention to the distinct statement in the President's message, of the proposition which I had suggested, and remarked, how much more it would mitigate the evils of war, and contribute to the prosperity of the world, than the naked proposition which had been adopted.

He listened very respectfully and earnestly to my observations, and remarked, that it was a very important proposition and deserved the most serious consideration. It is manifestly not too late, to procure for it the deliberate examination to which it is entitled. It may not be adopted, by one, perhaps by more of the great powers, who have united in the agreement adopted in the Congress. But if rejected, and the United States, isolated though they be, shall be compelled to decline to surrender her right of selfdefence, without any equivalent, she will stand justified before the world, for maintaining her rights, which she is willing to surrender, if other nations will agree with her, in surrendering a right to wage war on private property, lawfully pursuing its business on the High Seas.

I assured Count Walewski, that I would communicate to you the purport of our conversation, and expressed to him a wish, to show him my despatch reporting it, before I send it off.[2] He kindly said, that he would be pleased to see it, and named 1. o'clock on Wednesday next, as the hour at which he would receive me. It will be in time for my mail to go by the next steamer from Liverpool.

The response of Marcy to the communication of the Declaration of Paris by Comte de Sartiges, is dated July 28, 1856; the text of that

[1] The note of Walewski was that of December 18, 1855, cited above. The instruction of Marcy was that of February 7, 1856 (D.S., 15 Instructions, France, 320–21), the enclosures to which were copies of his reply of December 9, 1854, to the Prussian Minister (cited above), and of a portion of the message of President Pierce of December 4, 1854 (printed above).

[2] This was done on the Wednesday following, April 30, and Walewski approved "the correctness of the report" (see D.S., 38 Despatches, France, No. 142, May 1, 1856).

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answer, which is commonly known as the "second Marcy note", follows (D.S., 6 Notes to the French Legation, 274–94; notes of the same tenor were written on the same date to the Minister Resident of Austria, to the Minister of Prussia, and to the Chargés d'Affaires of Russia and Sardinia; there was no similar communication to Great Britain at this time, because of the cessation of diplomatic intercourse with Crampton; for the proposal to Great Britain made at London on February 24, 1857, see Moore, Digest, VII, 568):

The Undersigned, Secretary of State of the United States, has laid before the President "The declaration concerning maritime law" adopted by the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia and Turkey, at Paris, on the 16th of April 1856, which the Count de Sartiges, Envoy Extraordinary and Minister Plenipotentiary of France, has presented in behalf of the Emperor of the French to the Government of the United States, for the purpose of obtaining its adhesion to the principles therein contained.

Nearly two years since the President submitted, not only to the powers represented in the late Congress at Paris, but to all other maritime nations, the second and third propositions contained in that declaration, and asked their assent to them as permanent principles of international law. The propositions thus submitted by the President were:—

> "1. That free ships make free goods—that is to say, that the effects or "goods belonging to subjects or citizens of a power or State at war, are free "from capture and confiscation when found on board of neutral vessels, with "the exception of articles contraband of war;"—
>
> "2nd That the property of neutrals on board an enemy's vessel, is not "subject to confiscation, unless the same be contraband of war."

It will be perceived that these propositions are substantially the same as the second and third in the "Declaration" of the Congress at Paris.

Four of the Governments with which negotiations were opened on the subject by the United States have signified their acceptance of the foregoing propositions. Others are inclined to defer acting on them until the return of peace should furnish a more auspicious time for considering such international questions. The proceeding of the Congress of the Plenipotentiaries at Paris, will as a necessary consequence, defeat the pending negotiations with the United States, if the two following propositions contained in Protocol N° 24;[1] are acceded to;—*first* that the four principles shall be indivisible; and *second*, that the powers which have signed or may accede to the "Declaration" shall not enter into any arrangement in regard to the application of the right of neutrals in time of war, which does not, at the same time, rest on the four principles which are the object of said "Declaration", As the indivisibility of the four principles and the limitation upon the sovereign attribute of negotiating with other powers are not a part of the "Declaration", any nation is at liberty to reject either or both, and to act upon the "Declaration" without restriction acceding to it in whole or in part. In deliberating on this important subject it behooves all powers to consider, and, if they think proper, to act upon this distinction. All the powers which may accede to that "Declaration" and the subsequent restrictions contained in the 24th Protocol, will assume an obligation which takes from them the liberty of assenting to the propositions submitted to them by the United States, unless they at the same time surrender a principle of maritime law which has never been contested—the right to employ privateers in time of war.

The second and third principles set forth in the "Declaration", being those submitted to other maritime powers for adoption by this Government, it is most anxious to see incorporated by General consent into the code of maritime law, and thus placed beyond future controversy or question. Such a result securing so many advantages to the commerce of neutral nations, might have been reasonably expected but for the proceedings of the Congress at Paris, which require

[1] Cited above.

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them to be purchased by a too costly sacrifice—the surrender of a right which may well be considered as essential to the freedom of the seas.

The fourth principle contained in the "Declaration", namely:—"Blockades in "order to be binding must be effective; that is to say, maintained by a force "sufficient really to prevent access to the coast of the enemy";—can hardly be regarded as one falling within that class with which it was the object of the Congress to interfere; for this rule has not for a long time been regarded as uncertain, or the cause of any "deplorable disputes". If there have been any disputes, in regard to Blockades, the uncertainty was about the facts, but not the law. Those nations which have resorted to what are appropriately denominated "paper blockades", have rarely, if ever, undertaken afterwards to justify their conduct upon principle; but have generally admitted the illegality of the practice, and indemnified the injured parties. What is to be adjudged "a force sufficient "really to prevent access to the coast of the enemy" has often been a severely contested question; and certainly the declaration which merely reiterates a general undisputed maxim of maritime law does nothing towards relieving the subject of blockade from that embarrassment. What force is requisite to constitute an effective blockade remains as unsettled and as questionable as it was before the Congress at Paris adopted the "Declaration".

In regard to the right to employ privateers which is declared to be abolished by the first principle put forth in the "Declaration"—there was, if possible, less uncertainty. The right to resort to privateers, is as clear as the right to use public armed ships, and as incontestable as any other right appertaining to belligerents. The policy of that law has been occasionally questioned, not however by the best authorities but the law itself has been universally admitted, and most nations have not hesitated to avail themselves of it, It is as well sustained by practice and public opinion, as any other to be found in the maritime code.

There is scarcely any rule of international law which particular nations in their treaties have not occasionally suspended or modified in regard to its application to themselves. Two treaties only can be found, in which the contracting parties have agreed to abstain from the employment of Privateers in case of war between them. The first was a treaty [1] between the King of Sweden and the States General of the United Provinces in 1675. Shortly after it was concluded the parties were involved in war, and the stipulation concerning privateers was entirely disregarded by both. The second was the Treaty of 1785 between the United States and the King of Prussia. When this treaty was renewed in 1789 [*1799*], the clause stipulating not to resort to privateering was omitted.[2] For the last half century, there has been no arrangement by treaty or otherwise, to abolish the right, until the recent proceedings of the plenipotentiaries at Paris.

By taking the subject of privateering into consideration, that Congress has gone beyond its professed object, which was, as it declared, to remove the uncertainty on points of maritime law, and thereby prevent "differences of opinion between neutrals and belligerents, and consequently serious difficulties and even conflicts". So far as the principle in regard to privateering is concerned the proceedings of the Congress are in the nature of an act of legislation, and seek to change a well settled principle of international law.

The interest of Commerce is deeply concerned in the establishment of the two principles which the United States had submitted to all maritime powers, and it is much to be regretted that the Powers represented in the Congress at Paris, fully approving them should have endangered their adoption by uniting them to another inadmissible principle, and making the failure of all, the necessary consequence of the rejection of any one. To three of the four principles contained in the "Declaration there would not probably be a serious objection from any quarter, but to the other, a vigorous resistance must have been anticipated.

The policy of the law which allows a resort to privateers has been questioned for reasons which do not command the assent of this Government. Without entering into a full discussion on this point, the Undersigned will confront the ordinary and chief objection to that policy, by an authority which will be regarded

[1] The Latin text of this treaty of November 26, 1675, is in Dumont, Corps universel diplomatique du droit des gens, VII, pt. 1, 316–19.

[2] Cf. Article 23 of the treaty of September 10, 1785 (Document 13), with Article 23 of the treaty of July 11, 1799 (Document 24).

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with profound respect, particularly in France. In a commentary on the French Ordonnance of 1668, Valin says: [1]

> "However lawful and time-honored this mode of warfare may be, it is "nevertheless disapproved of by some pretended philosophers. According "to their notions, such is not the way, in which the State and the Sovereign "are to be served; whilst the profits which individuals may derive from the "pursuit are illicit, or at least disgraceful. But this is the language of bad "citizens, who under the stately mask of a spurious wisdom and of a craftily "sensitive conscience, seek to mislead the judgment by a concealment of the "secret motive, which gives birth to their indifference for the welfare and "advantage of the State. Such are as worthy of blame, as are those entitled "to praise, who generously expose their property and their lives to the "dangers of privateering."

In a work of much repute, published in France, almost simultaneously with the proceedings of the Congress at Paris, it is declared that—"The issuing of "letters of marque, therefore, is a constantly customary belligerent act. Priva- "teers are *bona fide* war vessels, manned by volunteers, to whom by way of "reward, the Sovereign resigns such prizes as they make; in the same manner as "he sometimes assigns to the land forces a portion of the war contributions "levied on the conquered enemy" [Pistoye et Duverdy, des Prises Maritimes.] [2]

It is not denied, that annoyances to neutral commerce, and even abuses, have occasionally resulted from the practice of privateering; such was the case formerly, more than in recent times; but when it is a question of changing a law the incidental evils are to be considered in connection with its benefits and advantages. If these benefits and advantages can be obtained in any other way without injury to other rights, these occasional abuses may then justify the change however ancient or firmly established may be the law.

The reasons which induced the Congress at Paris to declare privateering abolished, are not stated, but they are presumed to be only such as are usually urged against the exercise of that belligerent right.

The prevalence of Christianity and the progress of civilization, have greatly mitigated the severity of the ancient mode of prosecuting hostilities. War is now made an affair of Governments. It is the public authority which makes and carries on war; individuals are not permitted to take part in it, unless authorized to do so by their Government.

It is a generally received rule of modern warfare, so far at least as operations upon land are concerned, that the persons and effects of non-combatants are to be respected. The wanton pillage or uncompensated appropriation of individual property by an army, even, in possession of an enemy's country, is against the usage of modern times. Such a mode of proceeding at this day would be condemned by the enlightened judgment of the world, unless warranted by special circumstances. Every consideration which upholds this sentiment in regard to the conduct of a war on land, favors the application of the same rule to the persons and property of citizens of the belligerents found upon the ocean.

It is fair to presume that the strong desire to ameliorate the severe usages of war by exempting private property upon the ocean from hostile seizure, to the extent it is usually exempted on land, was the chief inducement which led to "the declaration" by the Congress at Paris, that "privateering is, and remains abolished".

The Undersigned is directed by the President to say, that to this principle of exempting private property upon the ocean, as well as upon the land, applied without restriction, he yields a most ready and willing assent. The Undersigned cannot better express the President's views upon the subject than by quoting the language of his annual Message to Congress, of December 4th 1854:

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[1] The paragraph following is a rendering of some passages in Valin's Traité des prises, I, 2. That work, in two volumes, was published in 1763, and the "Ordonnance de la Marine" which is the subject of comment was of August 1681 (not 1668).

[2] Traité des prises maritimes, 1859 ed., I, 27. The brackets are in the source paper.

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"The proposition to enter into engagements to forego a resort to priva-
"teers in case this country should be forced into a war with a great naval
"power, is not entitled to more favorable consideration than would be a
"proposition to agree not to accept the services of volunteers for operations
"on land. When the honor or rights of our Country require it to assume a
"hostile attitude, it confidently relies upon the patriotism of its citizens,
"not ordinarily devoted to the military profession, to augment the army
"and navy, so as to make them fully adequate to the emergency which calls
"them into action. The proposal to surrender the right to employ priva-
"teers, is professedly founded upon the principle, that private property of
"unoffending non-combatants, though enemies, should be exempt from the
"ravages of war; but the proposed surrender goes but little way in carrying
"out that principle, which equally requires that such private property
"should not be seized or molested by national ships of war. Should the
"leading powers of Europe concur in proposing, as a rule of international
"law, to exempt private property upon the ocean, from seizure by public
"armed cruizers as well as by privateers, the United States will readily meet
"them upon that broad ground."

The reasons in favor of the doctrine that private property should be exempted from seizure in the operations of war, are considered in this enlightened age so controlling as to have secured its partial adoption by all civilized nations; but it would be difficult to find any substantial reasons for the distinction now recognized in its application to such property on land, and not to that which is found upon the ocean.

If it be the object of the declaration adopted at Paris, to abolish this distinction, and to give the same security from the ravages of war, to the property of belligerent subjects on the ocean, as it is now accorded to such property upon the land, the Congress at Paris has fallen short of the proposed result by not placing individual effects of belligerents beyond the reach of public armed ships as well as privateers. If such property is to remain exposed to seizure, by ships belonging to the Navy of the adverse party, it is extremely difficult to perceive why it should not in like manner, be exposed to seizure by privateers which are in fact but another branch of the public force of the nation commissioning them.

If the principle of capturing private property on the ocean and condemning it as prize of war be given up, that property would and of right ought to be as secure from molestation by public armed vessels, as by privateers; but if that principle be adhered to, it would be worse than useless to attempt to confine the exercise of the right of capture to any particular description of the public force of the belligerents. There is no sound principle by which such a distinction can be sustained;—no capacity which could trace a definite line of separation proposed to be made and no proper tribunal to which a disputed question on that subject could be referred for adjustment. The pretence that the distinction may be supported upon the ground that ships not belonging permanently to a regular navy are more likely to disregard the rights of neutrals than those which do belong to such a navy is not well sustained by modern experience. If it be urged that a participation in the prizes is calculated to stimulate cupidity, that as a peculiar objection, is removed by the fact that the same passion is addressed by the distribution of prize-money among the Officers and crews of ships of a regular navy. Every nation which authorizes privateers, is as responsible for their conduct as it is for that of its navy, and will as a matter of prudence, take proper precaution and security against abuses.

But if such a distinction were to be attempted, it would be very difficult if not impracticable, to define the particular class of the public maritime force which should be regarded as Privateers "Deplorable disputes" more in number and more difficult of adjustment, would arise from an attempt to discriminate between privateers and public armed ships.

If such a discrimination were attempted every nation would have an undoubted right to declare what vessels should constitute its navy and what would be requisite to give them the character of public armed ships. These are matters which could not be safely or prudently left to the determination or supervision of any foreign power, yet the decision of such controversies would naturally fall

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into the hands of predominant naval powers which would have the ability to enforce their judgments. It cannot be offensive to urge weaker powers to avoid as far as possible, such arbitrament and to maintain with firmness every existing barrier against encroachments from such a quarter.

No nation which has a due sense of self respect will allow any other belligerent or neutral to determine the character of the force which it may deem proper to use in prosecuting hostilities; nor will it act wisely if it voluntarily surrenders the right to resort to any means sanctioned by international law which under any circumstances may be advantageously used for defence or aggression.

The United States consider powerful navies and large standing armies, as permanent establishments, to be detrimental to national prosperity and dangerous to civil liberty. The expense of keeping them up is burdensome to the people; they are in the opinion of this Government in some degree a menace to peace among nations. A large force ever ready to be devoted to the purposes of war is a temptation to rush into it. The policy of the United States has ever been, and never more than now, adverse to such establishments, and they can never be brought to acquiesce in any change in international law which may render it necessary for them to maintain a powerful navy or large standing army in time of peace. If forced to vindicate their rights by arms they are content, in the present aspect of international relations to rely, in military operations on land, mainly upon volunteer troops, and for the protection of their commerce in no inconsiderable degree upon their mercantile marine. If this country were deprived of these resources, it would be obliged to change its policy and assume a military attitude before the world. In resisting an attempt to change the existing maritime law that may produce such a result, it looks beyond its own interest, and embraces in its view the interest of all such Nations as are not likely to be dominant naval powers. Their situation in this respect, is similar to that of the United States, and to them the protection of commerce and the maintenance of international relations of peace appeal as strongly as to this Country, to withstand the proposed change in the settled law of nations. To such nations the surrender of the right to resort to privateers would be attended with consequences most adverse to their commercial prosperity without any compensating advantages. Most certainly no better reasons can be given for such a surrender, than for foregoing the right to receive the services of volunteers; and the proposition to abandon the former is entitled, in the judgment of the President, to no more favor than a similar proposition in relation to the latter. This opinion of the importance of privateers to the community of nations excepting only those of great naval strength, is not only vindicated by history but sustained by high authority. The following passage in the treatise [1] on Maritime prizes to which I have before referred, deserves particular attention:

> "Privateers are especially useful to those Powers, whose navy is inferior "to that of their enemies. Belligerents, with powerful and extensive naval "armaments may cruise upon the seas with their national navies; but should "those States whose naval forces are of less power and extent be left to their "own resources, they could not hold out in a maritime war; whilst by the "equipment of privateers, they may succeed in inflicting upon the enemy an "injury equivalent to that, which they themselves sustain. Hence Govern- "ments have frequently been known, by every possible appliance, to favor "privateering armaments. It has even occurred that sovereigns, not merely "satisfied with issuing letters of marque, have also taken, as it were, an "interest in the armament. Thus did Louis the XIV frequently lend out "his ships and sometimes reserve for himself a share in the prizes."

It certainly ought not to excite the least surprise that strong naval powers should be willing to forego the practice, comparatively useless to them, of employing privateers upon condition that weaker powers agree to part with their most effective means of defending their maritime rights. It is, in the opinion of this government, to be seriously apprehended that if the use of privateers be abandoned, the dominion over the seas will be surrendered to those powers which

[1] Pistoye et Duverdy, Traité des prises maritimes, 1859 ed., I, 24.

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adopt the policy and have the means of keeping up large navies. The one which has a decided naval superiority, would be potentially the mistress of the ocean, and by the abolition of privateering, that domination would be more firmly secured. Such a Power engaged in a war with a nation inferior in Naval strength, would have nothing to do for the security and protection of its commerce but to look after the Ships of the regular navy of its enemy. These might be held in check by one half or less, of its naval force, and the other might sweep the commerce of its enemy from the ocean. Nor would the injurious effects of a vast naval superiority to weaker States be much diminished if that superiority was shared among three or four great powers. It is unquestionably the interest of such weaker States to discountenance and resist a measure which fosters the growth of regular naval establishments.

In discussing the effect of the proposed measure, the abolition of privateering a reference to the existing condition of nations is almost unavoidable. An instance will at once present itself in regard to two nations where the commerce of each is about equal and about equally wide spread over the world As commercial powers they approach to an equality, but as naval powers there is great disparity between them. The regular navy of one vastly exceeds that of the other. In case of war between them, only an inconsiderable part of the Navy of the one would be required to prevent that of the other from being used for defence or aggression, while the remainder would be devoted to the unembarrassed employment of destroying the commerce of the weaker in naval strength. The fatal consequences of this great inequality of naval force between two such belligerents, would be in part remedied by the use of privateers; in that case while either might assail the commerce of the other in every sea they would be obliged to distribute and employ their respective navies in the work of protection. This statement only illustrates what would be the case with some modification, in every war, where there may be considerable disparity in the naval strength of the belligerents.

History throws much light upon this question. France, at an early period, was without a navy, and in her wars with Great Britain and Spain, both then naval powers, she resorted with signal good effect to Privateering, not only for protection but successful aggression. She obtained many privateers from Holland, and by this force gained decided advantages on the ocean over her enemy. Whilst in that condition, France could hardly have been expected to originate or concur in a proposition to abolish privateering. The condition of many of the smaller States of the world is now, in relation to naval powers not much unlike that of France in the middle of the Sixteenth century. At a later period during the reign of Louis XIV, several expeditions were fitted out by him, composed wholly of privateers which were most effectively employed in prosecuting hostilities with naval powers

Those who may have at any time a control on the ocean, will be strongly tempted to regulate its use in a manner to subserve their own interests and ambitious projects. The ocean is the common property of all Nations, and instead of yielding to a measure which will be likely to secure to a few—possibly to one an ascendancy over it, each should pertinaciously retain [all [1] the means it possesses to defend the common heritage. A predominant power upon the ocean, is more menacing to the well-being of others than such a power on land, and all are alike interested in resisting a measure calculated to facilitate the permanent establishment of such a domination, whether to be weilded by one power or to be shared among a few others.

The injuries likely to result from surrendering the dominion of the seas, to one or a few nations which have powerful navies, arise mainly from the practice of subjecting private property on the ocean to seizure by belligerents. Justice and humanity demand that this practice should be abandoned, and that the rule in relation to such property on land should be extended to it when found upon the high seas.

The President therefore proposes to add to the first proposition in the "Declaration" of the Congress at Paris, the following words: "*and that the private property of the subjects or citizens of a belligerent on the high seas, shall be exempted fvom seizure by public armed vessels of the other belligerent, except it be contraband*".

[1] The bracket is in the source paper.

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Thus amended the Government of the United States will adopt it, together with the other three principles contained in that "Declaration".

I am directed to communicate the approval of the President to the second, third, and fourth propositions, independently of the first, should the amendment be unacceptable. The amendment is commended by so many powerful considerations and the principle which calls for it has so long had the emphatic sanction of all enlightened nations in military operations on land, that the President is reluctant to believe it will meet with any serious opposition. Without the proposed modification of the first principle, he cannot convince himself that it would be wise or safe to change the existing law in regard to the right of privateering.

If the amendment should not be adopted, it will be proper for the United States to have some understanding in regard to the treatment of their privateers when they shall have occasion to visit the ports of those powers which are or may become parties to the declaration of the Congress at Paris. The United States will upon the ground of right and comity, claim for them the same consideration to which they are entitled, and which was extended to them under the law of nations before the attempted modification of it by that Congress.

As connected with the subject herein discussed, it is not inappropriate to remark that a due regard to the fair claims of neutrals would seem to require some modification, if not an abandonment of the doctrine in relation to contraband trade. Nations which preserve the relations of peace, should not be injuriously affected in their commercial intercourse by those which choose to involve themselves in war, provided the citizens of such peaceful nations do not compromise their character as neutrals, by a direct interference with the military operations of the belligerents. The laws of siege and blockade, it is believed, afford all the remedies against neutrals that the parties to the war can justly claim. Those laws interdict all trade with besieged or blockaded places. A further interference with the ordinary pursuits of neutrals in no-wise to blame for an existing state of hostilities, is contrary to the obvious dictates of justice. If this view of the subject could be adopted and practically observed by all civilized nations, the right of search which has been the source of so much annoyance and of so many injuries to neutral commerce, would be restricted to such cases only as justified a suspicion of an attempt to trade with places actually in a state of seige or blockade.

Humanity and justice demand that the calamities incident to war, should be strictly limited to the belligerents themselves, and to those who voluntarily take part with them; but neutrals abstaining in good faith from such complicity ought to be left to pursue their ordinary trade with either belligerent, without restrictions in respect to the articles entering into it.

Though the United States do not propose to embarrass the other pending negotiations relative to the rights of neutrals by pressing this change in the law of contraband, they will be ready to give it their sanction, whenever there is a prospect of its favorable reception by other maritime powers.

The amendment proposed by Marcy to the Declaration of Paris was to the same effect as the "rule of international law" previously and publicly suggested by President Pierce in his message of December 4, 1854 (quoted above), namely, that belligerent private property, not contraband, be exempt from capture on the high seas; such private property (taking into account the other rules of the declaration) would have included merchant vessels under the enemy flag and their cargoes (not contraband) of enemy ownership. The unanimous assent necessary for such an amendment was hardly to be expected and was not given, although the attitude of some Governments was

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favorable (see Moore, Digest, VII, 567, quoting an instruction of Marcy of November 24, 1856).[1]

For communication to other Governments, printed copies of the "second Marcy note" were transmitted to the diplomatic representatives in Washington of various American states on August 13, 1856 (see Manning, *op. cit.*, IX, 208–9), and were sent to various missions of the United States with covering instructions of August 5, 1856 (like that printed in the editorial notes to Document 171), or of August 29, 1856 (like that in Manning, *op. cit.*, I, 50–52). Two weeks before the "second Marcy note", identic instructions, of July 14, 1856, had been written to sixteen missions[2] (see the text of that to Naples in the editorial notes to Document 171) to present the "general view of the subject" therein set forth, in the hope that the respective Governments addressed might "be induced to hesitate in acceding to a proposition which is here conceived to be fraught with injurious consequences to all but those powers which already have, or are willing to furnish themselves with powerful navies". But the arguments of Marcy, even if they might otherwise have been effective, were too late;[3] by the date of the "second Marcy note"[4] the Declaration of Paris, signed, as has been stated, on behalf of Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey, had been approved by nearly all the other then existing Governments of Europe, including Belgium, Denmark, the Germanic Confederation,[5] Greece, the Netherlands, Portugal, Sweden and Norway, and Switzerland, besides the Papal States, Parma (August 20, 1856), Tuscany, and the Two Sicilies; Spain was the only important exception.[6]

[1] To the missions at London, Paris, St. Petersburg, The Hague, Berlin, Vienna, and Copenhagen, under date of January 31, 1857, Secretary of State Marcy sent instructions, with full powers, to invite the respective Governments to sign bilateral conventions embodying the Declaration of Paris with the amendment thereto proposed in the second Marcy note; a draft convention was transmitted (D.S., 17 Instructions, Great Britain, 58–60, 65–67; 4 Credences, 150, January 29, 1857); but those instructions were suspended by Secretary of State Cass within little more than two months thereafter and were not renewed (see Moore, Digest, VII, 567–70).

[2] Seven in European countries, Belgium, Denmark, the Netherlands, Portugal, Spain, Sweden and Norway, and the Two Sicilies; nine in America, the Argentine Confederation, Brazil, Chile, Ecuador, Mexico, New Granada, Nicaragua, Peru, and Venezuela. In a contemporaneous and apparently official reprint of Senate Executive Document No. 104, 34th Congress, 1st session (serial 825), it is said that this instruction was sent, *inter alia*, to Bolivia and Hawaii; but the archival evidence is to the contrary.

[3] It is to be remembered that Marcy could not have written much earlier than he did, on July 28, 1856, for he had not received the Declaration of Paris textually and officially until June 30.

[4] And thus before any of the earlier instructions of July 14, 1856, could have been received by their respective addressees, except perhaps that sent to Mexico City.

[5] Various states members of the Germanic Confederation also assented by separate acts in 1856 and 1857.

[6] Spain acceded by act of January 18, 1908 (101 British and Foreign State Papers, 162–63).

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In the same year various American states accepted [1] the Declaration of Paris, namely, the Argentine Confederation, Chile, Ecuador, Guatemala, and Haiti; in 1857 Peru and Brazil [2] also assented, as did (subject to legislative ratification) New Granada in 1856 and Uruguay by 1858 (see the report of Walewski dated June 12, 1858, in 48 British and Foreign State Papers, 132–63, and the table in Hertslet, Map of Europe by Treaty, II, 1284–85). Japan acceded to the Declaration of Paris in 1886 (77 British and Foreign State Papers, 945) and Mexico in 1909 (102 *ibid.*, 667–68). There are also so-called "indirect adherences" by bilateral treaties, of Honduras, El Salvador, Hawaii, and Siam respectively (see Piggott, 388–93).

One other aim of Marcy, referred to in his note of July 28, 1856, was to obtain assurances regarding the future treatment of American privateers in ports of parties to the Declaration of Paris;[3] this was more fully expressed in some of the instructions of the period, as in that to various missions of August 29, 1856 (D.S., 15 Instructions, Peru, 190; 17 Instructions, Mexico, 89–92; printed in full in the editorial notes to the convention with Peru of July 22, 1856), from which these two paragraphs are excerpted:

> The solicitude of the President to maintain the most friendly relations with the Government of Peru, makes it also important for him to know what will be the treatment of American privateers upon the high seas and in Peruvian ports, in case the United States should unhappily be at war with any other power which has acceded to the Declaration. It is not reasonable to expect that they will ever forego a resort to privateers in case they become involved in war with a commercial State. If such war should happen with a nation which has acceded to the "Declaration" proposed by the Congress at Paris will the neutral nations which may have also acceded to it, treat our privateers in any respect differently from the manner in which they have been heretofore treated by them? Will the privateers of the powers which do not become parties to the Declaration receive the same immunities in all neutral ports which have been heretofore accorded to such privateers? To prevent future misunderstanding, it is important that on these points this Government should be furnished with the views of the Governments which have agreed to that "Declaration" or may accede to it. You are therefore instructed by the President to make these inquiries of the Government of Peru.
>
> Though the President does not seriously apprehend that the rights of the United States in regard to the employment of Privateers will be affected directly or indirectly by the new state of things which may arise out of the proceedings of the Congress at Paris, yet it would be gratifying to him to be assured by the government of Peru that no new complications in our relations with it are likely to spring from those proceedings. He trusts that, so long as Peru is, and he anxiously desires she should ever be, a friendly power, her ports will be, as they heretofore have been, a refuge from the dangers of the sea and from attack, as

[1] The distinction between acceptance in principle and formal accession or adherence is of some importance, and the wording of the respective papers is to be examined. See the discussion above regarding Chile, under the heading "The Unperfected Treaty with Chile of May 27, 1856".

The distinction suggested by some writers between accession and adherence is one of theory and not one of diplomatic practice; the terms are interchangeable; to give only one of many instances, "accéder" is the verb of the Declaration of Paris and "adhérer" of the Declaration of London (see Wilcox, Ratification of International Conventions, 57).

[2] See Accioly, Actos internacionaes vigentes no Brasil, 2d ed., I, 91.

[3] Decrees of various states forbidding privateers to enter their ports during the Crimean War are printed in Piggott, 305–28; see also Malkin, 20.

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well for our privateers as for our merchant vessels and national ships of war in the event of hostilities between any other power and this country.

But the Governments addressed were naturally unwilling to abandon in advance a policy which to them, as neutrals in a future war, might then appear to be advantageous. With one notable exception, there seem to have been no engagements made in the sense desired by Marcy, other than that of the Kingdom of Hawaii by the note of April 8, 1857 (see the editorial notes to the declaration of Hawaii of March 26, 1855), and that of the Republic of Bolivia in Article 9 of the treaty of May 13, 1858 (12 Statutes at Large, 1003–22).

The exception was Russia; the Emperor of Russia "fully agreed with Marcy" (Golder, "Russian-American Relations during the Crimean War", 475, in American Historical Review, XXXI, 462–76); Stoeckl was instructed on August 2, 1856, to say to Marcy that in the event of war between the United States and a third power, American privateers would be admitted to Russian ports; that the Declaration of Paris left the Russian Government free in this regard; and that Russia had not agreed (*nous ne nous sommes pas engagés*) to maintain the principle of the abolition of privateering against those not acceding thereto (quoted in *ibid.*).

Negotiations of 1861

Regarding the negotiations of 1861, which did not result in the accession of the United States to the Declaration of Paris, see Moore, Digest, VII, 568–83; Adams, Seward and the Declaration of Paris; and the writings therein cited.

On August 24, 1861 (August 12, Old Style), a convention between the United States and Russia was signed at St. Petersburg (original, in English and French, in D.S., 19 Despatches, Russia, enclosure to No. 6, of August 17, 1861); of the two articles of that convention, the first contains the four rules of the Declaration of Paris, and the second, provisions for ratification and exchange; that convention was not submitted to the Senate and did not go into force (see Moore, Digest, VII, 583). The English version thereof follows:

The United States of America, and His Majesty, the Emperor of all The Russias, equally animated by a desire to define, with more precision, the rights of belligerents, and Neutrals, in time of war, have for that purpose Conferred full powers;

The President of The United States of America, on Cassius M. Clay, their Envoy Extraordinary and Minister Plenipotentiary, near His Imperial Majesty:

His Majesty the Emperor of All the Russias, on Prince Alexander Gortchacow, His actual Private Counselor, and Minister of Foreign Affairs, Knight of the Orders of Russia, and many others, &c. &c:

And the said Plenipotentiaries after having exchanged their full powers, found in good and due form, have Concluded and signed the following articles:

Article I.

I. Privateering is, and remains abolished.

II. The Neutral flag covers enemy's goods: with the exception of Contraband of War.

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III. Neutral goods, with the exception of Contraband of war, are not liable to Capture under enemy's flag.

IV. Blockades in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the Coast of the Enemy.

ARTICLE II.

The present convention shall be ratified by the President of the United States, by and with the advice and Consent of the Senate of said States, and His Majesty, The Emperor of all the Russias: and the ratifications shall be exchanged at Washington, within the space of six months, from the signature, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed the present Convention in duplicate; and have thereto affixed their seals. Done at St Petersburg the 12/24 Augt in the year of our Lord, one thousand eight hundred and sixty one.

[Seal] C. M. CLAY.
[Seal] PRINCE A. GORTCHACOW

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LAGOS : JULY 31, 1854

Engagement of the King and Chiefs of Lagos, signed on board the U.S.S. "Constitution", off Lagos, July 31, 1854. Original in English. Not subject to ratification. Not proclaimed.

Commodore Mayo Commander in Chief of the United States Naval Forces on the West Coast of Africa, having arrived off this port, desires to salute the King of Lagos.

The United States have for a long time maintained a Squadron on the Coast of Africa, to protect the persons and property of American Citizens, engaged in lawful commerce; and to arrest and bring to justice all persons who may endeavour to prosecute the Slave trade under the cover of the American Flag. The Commodore has heard with much satisfaction that the King of Lagos has done all in his power to suppress the African Slave trade, and that he affords every facility to vessels that come to his territory for the purpose of lawful traffic. He would be much gratified by receiving from the King and Chiefs of Lagos some formal and written assurance that Citizens of the United States, may always trade freely with the people of Lagos in all ports, places and rivers, within their territory; and some pledge that the King and Chiefs will show no favor, and give no privilege to the Ships and traders of other countries, which they do not show to those of the United States, and that all Citizens of the United States shall, under all circumstances, be placed upon the same footing with the Citizens of the most favored Nation.

Commodore Mayo requests the King to receive the assurance of his high respect and consideration.

U.S. Flag Ship Constitution.
Off Lagos. 31st July 1854.

To His Majesty the King of Lagos.

Docemo, King of Lagos, with his Chiefs and Councellors having carefully considered and discussed the propositions contained in the

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foregoing letter, do on the part of themselves and of their country, hereby assent to all the aforesaid propositions, and solemnly promise and guarantee to all Citizens of the United States, every right and privilege which may at any time be granted to the most favored nation with whom the King and Chiefs of Lagos have already, or, may hereafter, form a treaty, or conclude an agreement.

Witnesses.	KING X his mark. DOCEMO.
JNO. RUDD.	OLOOMOBONG X his mark.
Commander US Navy.	TALABEE X his mark.
C. R. P. RODGERS	OLOOCOHE X his mark
Flag Lieut Af. Sq^n	ACHABONG X his mark
	OBERCHOR. X his mark
	SERBER X his mark

FLAG SHIP CONSTITUTION
Off Lagos 31st July 1854.

I, S. B. Williams, a native of Lagos and Collector of the revenue of the King of Lagos, having been educated at the English school at Sierra Leone, have faithfully interpreted to the King and Chiefs of Lagos, the contents of the foregoing letter, and also the compact which they have signed, and I now certify that both the letter and compact are fully understood by them.

S. B WILLIAMS
Collector

U.S. FLAG SHIP CONSTITUTION
Off Lagos. 31st July. 1854.

Witness to signatures in the above & to the signature of the Interpreter to the British Consulate and Collector of the Kings Revenue

B CAMPBELL
HBM Consul

I MAYO
Commd^r in Chief U.S. Naval Forces West Coast of Africa.

NOTES

Whether strictly an international act or not, this "pledge" of Lagos, obtained by Commodore Isaac Mayo, U.S.N., is of sufficient interest to warrant its inclusion in this collection. The text above printed is from an original example of the engagement which is an enclosure to despatch No. 43, dated August 9, 1854, from Commodore Mayo to the Secretary of the Navy, James C. Dobbin (Naval Records

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and Library, African Squadron, Commodore Isaac Mayo, January 4, 1853–June 1, 1855; copies of the engagement are with a duplicate of the despatch in Area Folder A–4, May–August 1854, and with a copy of the despatch in Public Documents, African Squadron, 1852–55, pp. 201–8). That despatch reads as follows:

No 43.

FLAG SHIP CONSTITUTION
PRINCES ISLAND [1] (BIGHT OF BIAFFRA)
Aug[t] 9th 1854.

SIR I have the honor to enclose a duplicate of a letter addressed to the King of Lagos, to which is appended his reply, and a solemn pledge given by him and his chiefs for themselves and for their people, that Citizens and property of the United States shall henceforward in Lagos, be placed on the same footing with the Citizens and property of the most favored nation with which they already have, or may hereafter enter into a treaty. You will perceive that while this concession is so full on their part, I have carefully avoided making any pledge whatever on the part of the United States.

Lagos is one of the most important ports on the Bight of Benin, and is destined to become a place of much commercial importance. For many years it was one of the two ports most largely engaged in the Slave trade, Whydah [2] being its rival.

In 1851, the English Government having in vain tried the effect of negotiation and threats, proceeded to more stringent measures, and an Expedition from its Squadron, consisting of twenty three armed boats made in November, a demonstration against the town, which was repulsed by the natives. In this affair the English lost in killed and wounded fourteen Officers and men. In December of the same year the attack was renewed by a much larger force, the boats of the Squadron being supported by two small steamers which succeeded in getting into the river. This assault was made with desperate gallantry, and the natives were forced to abandon their town after having killed and wounded ninety two of their British assailants. The English then replaced upon his throne, the lawful King, Akitoye, who had been driven into exile by his cousin Kosoko, a fierce and warlike chief wholly devoted to the Slave trade. Akitoye readily bound himself by a treaty [3] with his English allies, to suppress the Slave trade in his dominions, to put an end to the shocking practice of offering human sacrifices, to afford protection to all christian Missionaries, and to throw open his country to foreign trade. An English Consulate was established, and the stipulations of the treaty have been faithfully observed both by Akitoye and by Docemo his son, who has succeeded to his throne.

The town in which this King resides, contains about eighteen thousand inhabitants, and must from its position become the centre of a very valuable trade. It is situated at the mouth of the river Ogu, which extends far into the interior, and affords a direct communication with Abeocuta, a city of eighty thousand inhabitants. It passes through a country of the richest fertility, supplying to commerce Palm Oil, Ivory, Cotton, Indigo and Ginger, and is inhabited by a people which will gladly till the soil when relieved from the desolating wars which have been constantly undertaken to supply the slave trade and the demand for human sacrifices. Vessels drawing ten feet can pass into this river from the sea, and from it there is a safe, continuous, and invaluable communication along the Coast both

[1] Principe Island (Portuguese), in the Gulf of Guinea, about 435 statute miles southeastward of Lagos.

[2] Also written Wida or Ouidah, on the coast of Dahomey, about ninety-five statute miles west of Lagos.

[3] For this engagement of the King and Chiefs of Lagos, dated January 1, 1852, see 41 British and Foreign State Papers, 735–37 (see also 42 *ibid.*, 693–95, February 28, 1852; 45 *ibid.*, 1031–34, March 27, 1854, and covering despatch of June 1, 1854); by Article 9 thereof the right was reserved to France to become party to the engagement; this was pursuant to Articles 4 and 5 of the convention between France and Great Britain of May 29, 1845, for the suppression of the slave trade (33 *ibid.*, 4–18).

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to the Westward and to the Southward, by a chain of Lagoons which will bring to it the produce of a great extent of country.

The exportation of Palm Oil alone is already very valuable, it must increase and attract the attention of our Merchants, to whom the pledge I now forward will secure every desirable privilege.

The French as well as the English, have made a treaty[1] with the King of Lagos, and this pledge which I have secured may prove particularly valuable if they should at any time attempt to obtain exclusive privileges. The King still feels insecure in the possession of his authority, for his rival, Kosoko, with about three thousand armed men and a well appointed flotilla of War canoes, still infests the Lagoons, and is ready to renew hostilities whenever a favorable opportunity may be offered. It is this fact that made the King so willing to enter into the terms I proposed. His strength is chiefly derived from his relations with civilized nations, and he will doubtless magnify his free concessions to me, into an alliance, the report of which will have its effect upon his enemies. The willingness with which the British Consul encouraged the King to take this step, probably sprung from the same cause, for the British Naval force on this station has been so much reduced, that the arrival of a large Ship like the Constitution was very opportune, and the friendly relations between its officers and the authorities on shore, could not fail to exercise a salutary influence.

I received a visit from the King on the 31 of July. He came on board in great state with a large retinue, and was received with a salute and other tokens of distinction.

I have the honor to be Very Respectfully
Your Obd^{t} Servt

I. MAYO
Commander in Chief U.S. Naval Forces West Coast of Africa

To the Honb^{le} J. C. DOBBIN
Secretary of the Navy. Washington

P.S. I have in my possession a specimen of the cotton produced near Lagos, it is of short staple and inferior quality.

Another report of the proceedings of Commodore Mayo is in this despatch of Benjamin Campbell, British Consul at Lagos, to the Earl of Clarendon, Secretary of State for Foreign Affairs, dated at Lagos August 1, 1854 (printed, with the text of the engagement, in 45 British and Foreign State Papers, 1034–37; that volume was published in 1865):

ON the 28th ultimo The United States' frigate *Constitution*, bearing the broad pennant of Commodore Mayo, the Commander-in-chief of The United States' naval forces on the West Coast of Africa, anchored in Lagos Roads.

Proceeding, on the following day, to pay my respects to Commodore Mayo, I met, just inside the bar, 2 boats from the frigate, bringing Flag-Lieutenant Rodgers and a party of officers on a visit to the town. I returned to the town with the officers, and accompanied them on their visit to King Docemo, to whom I introduced them.

Lieutenant Rodgers briefly explained to King Docemo that the object of the Commodore's visit to the coast was the protection of American commerce, and the suppression of Slave Trade carried on by vessels assuming the flag of The United States.

The officers were well received by King Docemo, who expressed himself much pleased with their visit.

Lieutenant Rodgers, before taking leave of King Docemo, assured him that Commodore Mayo, although confined to his cot from a severely-sprained ancle, would be happy to see King Docemo and his Chiefs on board the *Constitution*.

Lieutenant Rodgers and the officers who accompanied him, before embarking to return to their ship, walked over a great part of the town of Lagos. The

[1] No agreement between France and Lagos has been found; but see the preceding footnote.

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extent, population, cleanliness (they visited the best part), and the order that prevailed, surprised them. I gave Lieutenant Rodgers every information respecting the trade of Lagos, and the prospect of its increase could the Slave Trade be extinguished in other parts of the Bight of Benin.

On the following day several more officers of the Commodore's staff came to the town, visited the King and his Chiefs, and formally invited them to visit the Commodore on the following day.

The report of Lieutenant Rodgers and the officers who accompanied him having created considerable interest, I furnished Commodore Mayo with such information as I possessed, and sent him a spare copy of the "Papers on the Reduction of Lagos;" [1] and I suggested that King Docemo and his Chiefs would favourably receive any proposition from the Commodore to conclude a Treaty with him.

On the next day I paid my official visit to Commodore Mayo, by whom, and by his officers, I was most courteously received, with the usual honours.

King Docemo and his Chiefs also paid their visit to Commodore Mayo. They were received with every demonstration of respect by the Commodore and his officers, and hospitably entertained in the Commodore's cabin.

The Commodore informed King Docemo and his Chiefs that the President and the Government of The United States were very anxious to see the Slave Trade entirely suppressed on the coast of Africa, and a legitimate commerce flourishing in its stead; that having heard there was a considerable commerce springing up in Lagos, and that American trading vessels began to visit the port, he was prepared to submit a proposition in writing to the King and his Chiefs, having for its object the protection of American citizens and their property when trading at Lagos, and conferring to them the same rights and privileges as are or may be conferred to the subjects of other Powers.

The proposition was then twice read over, and carefully interpreted to the King and Chiefs by a Mr. S. B. Williams, one of the Sierra Leone emigrants, who superintends the collection of the King's export revenue, and acts as interpreter to this Consulate; and, being approved of by them, they signed at foot a written acceptance of the Commodore's proposition.

I have the honour to forward herewith, for your Lordship's information, a copy of this paper, which I apprehend, although not in the form of a Treaty, has nevertheless all the force of one.

The original engagement of Lagos was received at the Navy Department on November 27, 1854, and the copy thereof with the duplicate of the despatch of August 9, 1854, on December 21. The despatch was acknowledged, among thirteen others, by an instruction of January 9, 1855 (Naval Records and Library, Confidential Letters, No. 3, February 1, 1853–October 17, 1857, pp. 234–35); but no reference to the engagement was made therein or in subsequent instructions to Commodore Mayo; and no record of communication of the engagement by the Secretary of the Navy to the Secretary of State has been found. So far as has been observed, there was at the time no official notice taken of this engagement and no publication thereof by the Government of the United States.

Lagos has been British since August 6, 1861, when the native ruler (Docemo) ceded the port and island of Lagos (52 British and Foreign State Papers, 173–82; see also 57 *ibid.*, 353–54). "In 1906 the Colony of Lagos and its protected territories were combined with the Protectorate of Southern Nigeria and designated the Colony and Protectorate of Southern Nigeria, with Lagos as the seat of Government, and on the 1st of January, 1914, the Northern and Southern Protec-

[1] Parliamentary Papers, 1852, vol. 54, No. 1455, entitled "Papers Relative to the Reduction of Lagos by Her Majesty's Forces on the West Coast of Africa".

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torates were amalgamated to form the present Colony and Protectorate of Nigeria. . . . The main political divisions of Nigeria are the Colony of Nigeria and two groups of Provinces, known as the Northern and Southern Provinces, which together form the Protectorate" (Colonial Reports—Annual, No. 1904, Nigeria, 1938, 2–3).

Lagos is now the name of (1) a township comprised in part of the island of Lagos; (2) a lagoon in the Bight of Benin (a bay of the Gulf of Guinea); (3) an island in that lagoon; and (4) the town on the western portion of that island and near the southwest end of Lagos Lagoon, in about 6° 28′ north latitude and 3° 26′ east longitude, the seat of government of the Colony and Protectorate of Nigeria.

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Treaty Series No. 38
11 Statutes at Large, 601–3
18 *ibid.*, pt. 2, Public Treaties, 93–94

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BRUNSWICK : AUGUST 21, 1854

Convention Regarding Disposal of Property and Succession Thereto, signed at Washington August 21, 1854. Original in English and German.
Submitted to the Senate December 12, 1854. (Message of December 5, 1854.) Resolution of advice and consent, with amendment, March 3, 1855. Ratified by the United States July 10, 1855. Ratified by Brunswick March 31, 1855. (Regarding earlier ratification by Brunswick, in September 1854, see the editorial notes.) Ratifications exchanged at Washington July 28, 1855. Proclaimed July 30, 1855.

The President of the United States of America and His Highness the Duke of Brunswick & Luneburg, animated by the desire to secure and extend, by an amicable convention, the relations happily existing between the two countries, have, to this effect, appointed as their plenipotentiaries, to wit: the President of the United States of America, William L. Marcy, Secretary of State of the United States; and His Highness the Duke of Brunswick and Luneburg, Dr. Julius Samson, His said Highness' Consul at Mobile, Alabama; who, after the exchange of their full powers, found in good and due form, have agreed upon and signed the following articles:

Der Praesident der Vereinigten Staaten von America und Seine Hoheit der Herzog von Braunschweig und Lüneburg, bewogen durch den Wunsch, durch eine Convention die so glücklich bestehenden freundschaftlichen Beziehungen Ihrer beiden Staaten zu befestigen und weiter auszudehnen, haben zu diesem Zwecke zu Ihren Bevollmächtigten ernannt:

Der Praesident der V. Staaten von America Herrn William L. Marcy, Staatssecretair der V. Staaten und Se. Hoheit der Herzog von Braunschweig und Lüneburg Herrn Dr: Julius Samson Sr. Hoheit Consul in Mobile, Alabama, welche Bevollmächtigte nach vollzogener Auswechselung ihrer gegenseitig in richtiger und gehoeriger Form befundenen Vollmachten, nachstehende Artikel festgesetzt und unterzeichnet haben.

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ARTICLE I.

The citizens of each one of the high contracting parties shall have power to dispose of their personal property, within the jurisdiction of the other subject to the laws of the State or country, where the domicil is, or the property is found, either by testament, donation, or *ab intestato*, or in any other manner; and their heirs, being citizens of the other party, shall inherit all such personal estates, whether by testament or *ab intestato*, and they may take possession of the same, either personally or by attorney, and dispose of them as they may think proper, paying to the respective governments no other charges than those to which the inhabitants of the country in which the said property shall be found would be liable in a similar case; and, in the absence of such heir, or heirs, the same care shall be taken of the property that would be taken, in the like case, for the preservation of the property of a citizen of the same country, until the lawful proprietor shall have had time to take measures for possessing himself of the same; and in case any dispute should arise between claimants to the same succession, as to the property thereof, the question shall be decided according to the laws, and by the judges, of the country in which the property is situated.

ARTIKEL I.

Die Staatsangehörigen eines jeden der Hohen contrahirenden Theile soll in den Staaten des andern die Freiheit zustehen, über ihre beweglichen Güter, nach den Gesetzen des Staats oder Landes wo sich das Domizil befindet oder diese Güter vorhanden sind, durch Testament, Schenkung, *ab intestato* oder auf irgend andere Weise zu verfügen, und deren Erben, wenn sie Angehörige des andern abschließenden Theiles sind, sollen im Besitze solcher beweglichen Güter nachfolgen, entweder durch Testament oder ab intestato, auch Possession von solchen nehmen, entweder in Person oder durch andere, welche an ihrer Stelle handeln, und nach Gutdünken damit schalten können, ohne andere Steuern zu bezahlen, als solche, welchen die Einwohner des Landes, worin sich die genannten Güter befinden, bei gleichem Anlasse unterworfen sind;—und im Falle der Abwesenheit des Erben oder der Erben soll hinsichtlich der erwähnten Güter dieselbe Sorgfalt angewendet werden, welche man bei gleichem Anlasse zur Sicherstellung des Nachlasses eines Staatsangehoerigen desselben Landes anwenden würde, bis der gesetzmäßige Eigenthümer Zeit gehabt hat, selbigen Nachlass in Besitz zu nehmen; und sollten Streitigkeiten wegen der nachgelassenen Güter zwischen Personen, welche Erben zu

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sein beanspruchen, entstehen, so sollen dieselben nach den Gesetzen und von den Richtern des Landes entschieden werden, in welchem das Object der Erbschaft sich befindet.

ARTICLE II.

If, by the death of a person owning real property in the territory of one of the high contracting parties, such property should descend, either by the laws of the country, or by testamentary disposition, to a citizen of the other party, who, on account of his being an alien, could not be permitted to retain the actual possession of such property, such term as the laws of the State or country will permit shall be allowed to him to dispose of such property, and collect and withdraw the proceeds thereof, without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which such real property may be situated.

ARTIKEL. II.

Wenn durch den Tod irgend eines Besitzers von Immobilien oder Grundeigenthum, welche sich auf dem Gebiete des einen der Hohen contrahirenden Theile befinden, solche Güter nach dem Gesetze des Landes oder nach testamentarischer Verfügung auf einen Angehörigen des andern Theils übergehen würden, dem es aber, da er ein Fremder, nicht erlaubt ist, solche Güter in wirklichem Besitze zu halten, dann soll ihm ein solcher Termin, die obigen Güter zu verkaufen, die Gelder einzucassiren, und den Ertrag zu sich zu nehmen gewährt werden, wie ihn die Gesetze des Staates oder Landes gewähren; ohne der Regierung andere Steuern zu bezahlen, als in einem ähnlichen Falle ein Angehoeriger des Staates wo sich der Grundbesitz befindet, zu bezahlen verbunden wäre.

ARTICLE III.

The present convention shall be in force for the term of twelve years from the date hereof; and further, until the end of twelve months after the government of the United States on the one part,

ARTIKEL III.

Der gegenwärtige Vertrag soll für zwölf Jahre lang vom heutigen Tage angerechnet, Verbindlichkeit haben, und für weiter bis zum Ende von zwölf Monaten, bis nachdem die Regierung der V.

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or that of His Highness the Duke of Brunswick and Luneburg on the other, shall have given notice of its intention of terminating the same.

This convention shall be ratified, and the ratifications shall be exchanged at Washington within twelve months after its date, or sooner, if possible.

In faith whereof, the respective plenipotentiaries have signed the present convention, and have thereunto affixed their seals.

Done at Washington, this twenty-first day of August in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States the seventy-ninth.

[Seal] W. L. MARCY
[Seal] JULIUS SAMSON

Staaten einerseits oder Seine Hoheit der Herzog von Braunschweig und Lüneburg andererseits von Deren Absicht diese Convention aufhören zu lassen, Anzeige gemacht haben.

Dieser Vertrag soll ratificirt und die Ratifications-Urkunden innerhalb zwölf Monaten, vom heutigen Tage an gerechnet, oder wo möglich früher, in Washington ausgewechselt werden.

In Urkund dessen haben die beiderseitigen Bevollmächtigten gegenwärtigen Vertrag unterschrieben und ihre Siegel beigedrückt.

Ausgestellt in Washington heutigen Tages am 21ten August im Jahre des Herrn Ein Tausend acht Hundert und vier und fünfzig und dem neun und siebzigsten der Unabhängigkeit der Vereinigten Staaten:

[Seal] JULIUS SAMSON
[Seal] W. L. MARCY.

NOTES

In the original of this convention in the treaty file the English version is in the left columns and the German (in German script) in the right.

The file papers include the attested Senate resolution of March 3, the Brunswick instrument of ratification of March 31, the duplicate United States instrument of ratification of July 10, the certificate of the exchange of ratifications at Washington on July 28, and the original proclamation of July 30, 1855.

The certificate of exchange, in English, is signed by William Hunter, Jr., Acting Secretary of State, and by Dr. Julius Samson, Consul of Brunswick at Mobile, Alabama.

No mention of the Senate amendment is made in the proclamation (see 11 Statutes at Large, 601–3).

The text of the convention in the Brunswick instrument of ratification is in the two languages, the German (in German script) in the

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left columns, incorporating in each version the Senate amendment; otherwise that instrument, which, curiously enough, is not signed by the Duke of Brunswick, reads in translation as follows:

By the Grace of God, We, William, Duke of Brunswick and Lüneburg, etc., etc., etc.

Herewith proclaim and make known:

The convention concerning the abolition of the *droit d'aubaine* and various other subjects concluded on August 21 of this year by Our Plenipotentiary and the Plenipotentiary of the United States of North America, which reads word for word as follows:

[Here follows the text of the convention in German and English]

having been submitted to and approved by Us, We hereby declare that We accept and ratify this convention in all the provisions therein contained.

Witness Our signature and ducal seal hereto affixed.

Given at Brunswick March 31, 1855.

[Seal]

By special command of His Highness.

VON SCHLEINITZ.

The order of precedence in favor of the United States in the wording of the printed text is the same in that included in the Brunswick instrument of ratification; so only in respect of the signatures and the columns of the text is the *alternat* observed.

The text of the convention following the headnote is from the original in the treaty file with these exceptions: (1) pursuant to the Senate amendment of March 3, 1855, which was accepted by the Government of Brunswick, these words were inserted in Article 1: "subject to the laws of the State or country, where the domicil is, or the property is found" (in the German: "nach den Gesetzen des Staats oder Landes wo sich das Domizil befindet oder diese Güter vorhanden sind"); the English of the amendment is from the attested resolution of the Senate (the wording being the same in the duplicate United States instrument of ratification), and the German from the instrument of ratification on the part of Brunswick; (2) a correction in the German of the datal clause, which is taken from the Brunswick instrument of ratification, the words "und vier" having been omitted by a slip in the signed original.

THE FULL POWERS

In the preamble of the convention it is said that the full powers were exchanged; that given to Secretary of State Marcy, dated August 19, 1854, was of this tenor (D.S., 4 Credences, 79):

Franklin Pierce, President of the United States of America.

To all to whom these presents shall come, Greeting:

Know Ye, that reposing special trust and confidence in the integrity, prudence and abilities of William L. Marcy, Secretary of State of the United States, I have invested him with full and all manner of power for, and in the name of the

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United States, to meet and confer with any person or persons furnished with like powers on the part of His Highness the Duke of Brunswick, and with him or them to treat, consult and negotiate of and concerning a Convention or Conventions relative to the succession to the estates, real and personal, of the citizens of either of the contracting parties dying within the jurisdiction of the other party, and of all matters and subjects connected therewith which may be interesting to the two governments; and to conclude and sign a Convention or Conventions, touching the premises, for the final ratification of the President, by and with the advice and consent of the Senate of the United States.

In testimony whereof I have caused the seal of the United States to be hereunto affixed.

Given under my hand at the City of Washington this 19th day of
(L.S.) August, Anno Domini, 1854, and of the Independence of the United States the 79th.

FRANKLIN PIERCE.

By the President:
W. L. MARCY,
Secretary of State.

The letter of July 8, 1854, quoted below, from the Plenipotentiary of Brunswick, Dr. Julius Samson, Consul at Mobile, to Secretary of State Marcy, includes the statement: "I will have the honor, to present my credentials to you in a few weeks at Washington". It appears that those credentials were duly presented. The original full power to Dr. Samson, dated May 25, 1854, together with his original exequatur of November 22, 1853, is bound in D.S., 3 Notes from Foreign Consuls, in chronological position by the date of the full power. That paper reads in translation as follows:

By the grace of God, We, William, Duke of Brunswick and Lüneburg, etc., etc., etc.

Herewith make known:

Deeming it desirable to arrange a convention between Our Duchy and the United States of North America regarding mutual abrogation of the right of escheat (*droit d'aubaine*), We accordingly, with a view to concluding an agreement of similar tenor to the convention [1] concluded between Switzerland and the United States regarding that subject, hereby confer on Julius Samson, M.D., at Mobile in the State of Alabama, Our Consul for the Southern States of the North American Union, full power to enter into negotiations with the central Government at Washington and to agree upon a similar treaty, subject to Our ratification.

Witness Our signature and ducal privy chancery seal hereto affixed.

Brunswick, May 25, 1854.

[Seal]

By special command of His Highness.
VON SCHLEINITZ.

Full power for Our Consul for the Southern States of the North American Union, JULIUS SAMSON, M.D., at Mobile, Alabama.

The records include no mention of full powers to exchange the ratifications.

THE NEGOTIATIONS

Aside from the full powers above quoted, the only paper relevant to the negotiation of this convention that has been found in the

[1] Document 127.

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archives of the Department of State is this letter, dated at Mobile July 8, 1854, from Dr. Samson to Secretary of State Marcy (*ibid.*):

> His Highness the Duke of Brunswick desirous, to promote still farther the feelings of amity already existing between His dominions and the U.S. of America, has appointed me His Plenipotentiary, to negociate a treaty with the United States similar to that formed with the States of Wuertemberg, Nassau, Saxony and the Swiss Confederation.
>
> For that purpose I will have the honor, to present my credentials to you in a few weeks at Washington.

For the conventions with Württemberg, Nassau, and Saxony to which Samson referred, respectively of April 10, 1844, May 27, 1846, and May 14, 1845, see Documents 107, 120, and 115. The final reference is to the convention with Switzerland of May 18, 1847 (Document 127); that convention of 1847 with Switzerland was taken as the basis of this convention. The English version of this convention, as signed, is, with one exception, almost word for word the same, *mutatis mutandis*, as the English of the convention of 1847 with Switzerland; the exception is in Article 2, where the term allowed for the disposal of real property is changed from the three years of the 1847 convention to "such term as the laws of the State or country will permit". That change was doubtless owing to the Senate amendment of May 29, 1854, to the convention with Switzerland of November 25, 1850 (Document 144); that convention did not enter into force until November 8, 1855; the mentioned Senate amendment thereto had been under consideration by Marcy very shortly before the signature of this convention (see vol. 5, pp. 890–92).

The Senate Amendment

The Senate amendment to this convention was first proposed by the Committee on Foreign Relations (for the Senate proceedings, see Executive Journal, IX, 392–93, 411, 435); thereby these words were inserted in Article 1: "subject to the laws of the State or country, where the domicil is, or the property is found".

It would seem that the effect of the Senate amendment was not limitative, except perhaps that it might in some cases exclude consideration of the law of nationality; certainly the wording of the amendment would permit succession to personalty of an intestate to be adjudged according to the law of domicil; and apparently gift or bequest might be held valid if good under either the law of domicil or the law of *locus* of the personalty.

Ratification and Exchange

The convention was first ratified by the Duke of Brunswick within a few weeks of its signature; on October 13, 1854, Samson wrote from New York to Marcy as follows (D.S., 3 Notes from Foreign Consuls):

> The ratifications of the treaty between the United States and the Dukedom of Brunswick having been sent to me for exchange by the Brunswick Government, you will kindly please to notify me as soon as convenient, when such exchange

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can take place; and if the consent of the Senate of the United States is required to that effect; so that in that case I would have to await, the commencement of the next session of Congress.

To this Marcy answered that it would be necessary to submit the convention to the Senate, that it would be laid before that body early in the ensuing session, and that, when ratified by the President, notice to that effect would be given and a time appointed for the exchange (D.S., 1 Notes to Foreign Consuls, 26, October 14, 1854). Under date of March 6, 1855, Samson, at Mobile, was informed by Marcy of the Senate amendment and of his "readiness to exchange the President's ratification of the said Convention, subject to the foregoing amendment of the Senate, for the ratification of His Highness the Duke of Brunswick & Luneburg, at any time before the expiration of the period named for that purpose in the Convention" (*ibid.*, 32). Ratification by the Duke of Brunswick followed promptly (March 31, 1855), and the instrument was in the hands of Samson by June 25, when he wrote from New York of his readiness to make the exchange (D.S., 3 Notes from Foreign Consuls); but there was delay, owing, in part, to the absence of President Pierce (D.S., 1 Notes to Foreign Consuls, 38, June 28, 1855). The dates of ratification by the United States and exchange of ratifications were respectively July 10 and July 28, 1855. Prints of the proclamation of July 30 were forwarded to Samson, who acknowledged them from New York on August 19, 1855 (D.S., 3 Notes from Foreign Consuls).

Duration of the Convention

From 1815 Brunswick had been member of the Germanic Confederation, in 1866 became member of the North German Confederation, and in 1870–71 one of the States of the German Reich (see the editorial notes to Documents 59 and 152).

No notice of termination of this convention, pursuant to Article 3, was given on either part; if the continuance of the convention in force until the war between the United States and Germany (April 6, 1917) be assumed, then, pursuant to Articles 289 and 440 of the Treaty of Versailles and to clause 5 of Article 2 of the treaty between the United States and Germany signed at Berlin on August 25, 1921 (42 Statutes at Large, 1939–45), notification might have been given by the Government of the United States during the six-month period ending May 11, 1922, of the revival thereof; but no such notification was given to the Government of Germany.

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Treaty Series No. 364
11 Statutes at Large, 607-9
18 *ibid.*, pt. 2, Public Treaties, 777-78

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TWO SICILIES : JANUARY 13, 1855

Convention Regarding the Rights of Neutrals at Sea, signed at Naples January 13, 1855. Original in English and Italian. Submitted to the Senate February 20, 1855. (Message of February 14, 1855.) Resolution of advice and consent March 3, 1855. Ratified by the United States March 20, 1855. Ratified by the Two Sicilies April 4, 1855. Ratifications exchanged at Washington July 14, 1855. Proclaimed July 16, 1855.

Convention between The United States of America and his Majesty the King of the Kingdom of the two Sicilies signed at Naples 13th January 1855.

The United States of America and his Majesty the King of the Kingdom of the two Sicilies, equally animated with a desire to maintain and to preserve from all harm, the relations of good understanding which have, at all times, so happily subsisted between themselves, as also between the inhabitants of their respective States, have mutually agreed to perpetuate, by means of a formal convention, the principles of the right of neutrals at sea, which they recognise as indispensable conditions of all freedom of navigation and maritime trade. For this purpose the President of the United States has conferred full powers on Robert Dale-Owen Minister Resident at Naples of the United States of America; and his Majesty the King of the Kingdom of the two Sicilies has

Sua Maestá il Re del Regno delle due Sicilie e gli Stati Uniti di America animati da egual desiderio di mantenere e preservare da qualunque alterazione i rapporti di buona intelligenza che in ogni tempo hanno felicemente esistito fra Loro e fra gli abitanti de'Loro stati rispettivi, hanno di comune accordo risoluto di sanzionare, per mezzo di una formal Convenzione, i principî de'diritti de'neutri sul mare, ch'Eglino riconoscono quali condizioni indispensabili di ogni libertá di navigazione e di commercio marittimo. A tal fine Sua Maestá il Re del Regno delle due Sicilie ha munito di pieni-poteri il Sigr D. Luigi Carafa della Spina de'Duchi di Traetto, Maggiordomo di settimana della Maestá Sua, Commendatore del Suo Real Ordine del Merito Civile di Francesco

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conferred like powers on Mr: Louis Carafa della Spina, of the Dukes of Traetto Weekly Majordomo of his Majesty, Commendator of his Royal Order of the Civil Merit of Francis the first, Grand Cross of the distinguished R[l] Spanish Order of Charles the third, Great Officer of the Order of the Legion d'Honneur, Grand Cross of the Order of S. Michael of Baviera, Grand Cross of the Florentine Order of the Merit under the title of S. Joseph, Grand Cross of the Order of Parma of the Merit under the title of S. Ludovico, Grand Cross of the Brasilian Order of the Rose, provisionally charged with the Portfolio of Foreign Affairs: and said plenipotentiaries after having exchanged their full powers, found in good and due form, have concluded and signed the following articles.

ART. 1º

The two high contracting parties recognise as permanent and immutable the following principles, to wit:

1st. That free ships make free goods—that is to say, that the effects or goods belonging to subjects or citizens of a Power or State at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

2d: That the property of neutrals on board an enemy's vessel

1º, Gran Croce del distinto Real Ordine Spagnuolo di Carlo 111º Grande Ufiziale dell'ordine della Legione di onore, Gran Croce dell'Ordine di S. Michele di Baviera, Gran Croce dell'Ordine Toscano del Merito sotto il titolo di S. Giuseppe, Gran Croce dell'Ordine di Parma del Merito sotto il titolo di S. Ludovico, Gran Croce dell'Ordine della Rosa del Brasile, provvisoriamente incaricato del Portafoglio del Ministero degli Affari Esteri; ed il Presidente degli Stati Uniti di America ha munito degli stessi poteri il Sig[r] Roberto Dale-Owen Ministro Residente di detti Stati Uniti in Napoli. I quali Plenipotenziarî dopo di avere scambiato i loro pieni-poteri, e trovatili in buona e dovuta forma, hanno stabilito e sottoscritto i seguenti articoli.

ART. 1º

Le due Alte Parti contraenti riconoscono come permanenti ed invariabili i principî seguenti, cioé

1º Che la Bandiera copre la mercanzia (that free ships make free goods) val quanto dire, che gli effetti e le mercanzie di proprietá dei sudditi o de'cittadini di una Potenza o di uno Stato in guerra, sono esenti da cattura o confiscazione sui bastimenti neutrali, eccetto che gli oggetti di contrabbando di guerra.

2º Che la proprietá de'neutri non é soggetta a confiscazione sul

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is not subject to confiscation, unless the same be contraband of war. They engage to apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them on their part as permanent and immutable.

ART. 2º

The two high contracting parties reserve themselves to come to an ulterior understanding as circumstances may require, with regard to the application and extension to be given, if there be any cause for it, to the principles laid down in the 1st. article. But they declare from this time that they will take the stipulations contained in said article 1st as a rule whenever it shall become a question, to judge of the rights of neutrality.

ART. 3º

It is agreed by the high contracting parties that all nations which shall or may consent to accede to the rules of the first article of this convention, by a formal declaration stipulating to observe them, shall enjoy the rights resulting from such accession as they shall be enjoyed and observed by the two Powers signing this convention. They shall mutually communicate to each other the results of the steps which may be taken on the subject.

bordo di nave nemica, a meno che sia contrabando di guerra. Esse Parti contraenti prendono impegno di applicare questi principî al commercio ed alla navigazione di qualunque Potenza o Stato che vorrá dal canto suo adottarli come permanenti ed invariabili.

ART. 2º

Le due Alte Parti contraenti si riservano d'intendersi ulteriormente secondo che le circostanze potranno esigerlo, circa l'applicazione e l'estensione da darsi, se vi sará luogo, ai principî convenuti nell'articolo 1º Ma fin da ora dichiarano che Elleno prenderanno per norma le stipulazioni contenute nel detto articolo 1º tutte le volte che si tratterá di valutare i dritti di neutralitá.

ART. 3º

É convenuto fra le Alte Parti contraenti, che tutte le Nazioni che consentir volessero ad accedere alle norme convenute nell'Articolo 1º di questa Convenzione, mediante una formale Dichiarazione, con cui s'impegnino ad osservarle, godranno de'diritti risultanti da tale accessione, nel modo stesso che le Potenze segnatarie di questa Convenzione godranno di siffatti dritti e li osserveranno. Elleno si comunicheranno reciprocamente il risultamento delle pratiche che a tale scopo saran fatte

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ART. 4.

The present convention shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of said States, and by his Majesty the King of the Kingdom of the two Sicilies, and the ratifications of the same shall be exchanged at Washington within the period of twelve months, counting from this day, or sooner if possible.

In faith whereof, the respective plenipotentiaires have signed the present Convention, in duplicate, and thereto affixed the seal of their arms.

Done at Naples, thirteenth of January eighteen-hundred & fifty five.

ROBERT DALE OWEN.
[Seal]

ART 4º

La presente Convenzione sará approvata e ratificata da Sua Maestá il Re del Regno delle due Sicilie, e dal Presidente degli Stati Uniti di America, con l'avviso e consenso del Senato de'detti Stati Uniti, e le ratifiche ne saranno scambiate in Washington nello spazio di dodici mesi a contare da questo giorno, o piú presto se sará possibile.

In fede di che i Plenipotenziarî rispettivi hanno sottoscritto la presénte Convenzione in duplice spedizione, e vi hanno apposto il suggello delle loro armi.

Fatta in Napoli li tredici di gennaio mille ottocento cinquantacinque

LUIGI CARAFA
[Seal]

NOTES

The papers in the treaty file include the signed original of the convention in English and Italian (the English version being written in the left columns), the attested Senate resolution of March 3, the duplicate United States instrument of ratification of March 20, the act of exchange of ratifications at Washington of July 14, in English, and the original proclamation of July 16, 1855. The instrument of ratification of the King of the Kingdom of the Two Sicilies, Ferdinand II, dated at the Royal Palace of Caserta April 4, 1855, is beautifully engrossed on parchment, with illuminated letters, and has the seal appendant in a gilt skippet. In the text therein included the Italian version is in the left columns, followed by the indicated signature of the Plenipotentiary of the Two Sicilies.

THE FULL POWERS

In this case the original full powers were exchanged. That issued to Robert Dale Owen, the Plenipotentiary of the United States, was in this customary form (D.S., 4 Credences, 95):

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Franklin Pierce, President of the United States of America.

To all to whom these presents shall come, Greeting:

Know Ye, That for the purpose of confirming between the government of the United States and the government of His Majesty the King of the Kingdom of the Two Sicilies, perfect harmony and good correspondence, and reposing special trust and confidence in the integrity, prudence and ability of Robert Dale Owen, Minister Resident of the United States at Naples, I have invested him with full and all manner of power, for and in the name of the United States to meet and confer with any person or persons duly authorized by the Government of the Two Sicilies, being furnished with like power and authority; and with him or them to agree, treat, consult and negotiate of and concerning the rights of neutrals and of all matters and subjects connected therewith, and to conclude and sign a Treaty or Treaties, Convention or Conventions, touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate thereof, if such advice and consent be given.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed.

(L.S.) Given under my hand at the City of Washington the 29th day of November, 1854, and of the Independence of the United States the 79th.

FRANKLIN PIERCE.

By the President:
W. L. MARCY,
Secretary of State.

The original full power of the Plenipotentiary of the Two Sicilies is an enclosure to Owen's despatch of January 13, 1855 (printed below). It reads as follows (translation from the Italian):

We, Ferdinand II, by the grace of God King of the Kingdom of the Two Sicilies, of Jerusalem, etc., Duke of Parma, Piacenza, Castro, etc., etc., Grand Hereditary Prince of Tuscany, etc., etc., etc., being resolved to accept the friendly proposal made Us by the Government of the United States of America to conclude a convention with a view to establishing upon immovable and lasting bases the principles which, in time of war, should govern the rights of neutrality in maritime trade and in navigation, have chosen you, Luigi Carafa della Spina, of the Dukes of Traetto, Our Majordomo of the week, Knight of Our Royal Order of Civil Merit of Francis I, Grand Cross of the distinguished Spanish Royal Order of Charles III, Grand Officer of the Order of the Legion of Honor, Grand Cross of the Order of St. Michael of Bavaria, Grand Cross of the Tuscan Order of Merit under the title of St. Joseph, Grand Cross of the Royal Order of Merit of Parma under the title of St. Ludwig, Grand Cross of the Order of the Rose of Brazil, provisionally invested with the portfolio of the Ministry of Foreign Affairs, whose attachment to Our royal person is well known to Us, and in whose enlightened zeal We have entire confidence, and We do appoint you Our Plenipotentiary *ad hoc*, authorizing you by these presents to negotiate and sign the aforementioned convention, solemnly promising, upon Our sacred word, to hold as valid and binding whatever in Our name you shall agree upon with the Plenipotentiary of the United States of America respecting this important subject. In witness whereof We have signed the present power with Our hand, We have had the seal of Our royal arms apposed thereon, and We have had it countersigned by Our Minister Secretary of State, President of the Council of Ministers.

Given in Naples this seventh day of January, one thousand eight hundred and fifty-five.

[Seal] FERDINANDO

The Minister Secretary of State,
President of the Council of Ministers:
FERDINANDO TROJA

The original full power to exchange the ratifications which was issued to Secretary of State Marcy under date of July 11, 1855, is

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in the treaty file (recorded in D.S., 4 Credences, 113). It is not now customary to issue a full power to the Secretary of State to exchange ratifications of a treaty, as such authority is deemed inherent in his office.

The Negotiations

This convention was a sequel to the similar convention with Russia of July 22, 1854 (Document 168), the editorial notes to which should be consulted.

On September 8, 1854, Secretary of State Marcy sent the following instruction to Robert Dale Owen, Minister Resident at Naples (D.S., 14 Instructions, Two Sicilies, 84; 15 Instructions, Spain, 77–78):

> Herewith I transmit to you a projet of a Convention in relation to neutral rights to be submitted to the Sicilian government for its approval and adoption. It affirms the principles that free ships make free goods, contraband excepted, and that the property of neutrals, not contraband, found on board of enemies' ships, is not confiscable.
>
> These two principles have been adopted by Great Britain and France as rules of conduct towards all neutrals in the present European war, and it is presumed that neither nation will refuse to recognize them as rules of international law, and to conform to them in all time to come.
>
> The Emperor of Russia has lately concluded a treaty with the United States embracing these principles as permanent and immutable and to be scrupulously observed towards all powers which accede to the same.
>
> It is the intention of the United States to propose to the principal powers to enter into treaty arrangements for the recognition of these principles.
>
> Should the Government of the Two Sicilies be disposed to meet these views of the President of the United States, this Government will promptly enter into treaty stipulations with that of the Two Sicilies upon the subject.

Owen wrote that he had "made out" and communicated to the Minister of Foreign Affairs, Luigi Carafa della Spina, "the projet of a treaty between the United States and the King of the Two Sicilies, couched in the same terms (mutatis mutandis) as that made with the Emperor of Russia", that he had had an interview with the Minister on the subject, and that the Cabinet unanimously agreed on October 21, 1854, to accept the project; a few days later Owen was informed of the approval of the King (D.S., 2 Despatches, Italy: Naples, Nos. 21 and 23, October 21, 22, and 25, 1854). There was some delay, as Owen did not then have a full power. That necessary formal authority was transmitted on November 29, 1854 (D.S., 14 Instructions, Two Sicilies, 86); and the signing of the convention on January 13, 1855, is reported in this despatch of Owen of that date (D.S., 2 Despatches, Italy: Naples, No. 30):

> Today I exchanged full powers with M. Carafa, Minister of Foreign Affairs, and we signed, in duplicate, a Treaty in regard to the rights of neutrals at sea, in the same words, *mutatis mutandis*, as that concluded on the same subject, with the Emperor of Russia.
>
> I have now the honor to enclose the Treaty, written in English and Italian, in parallel columns. Before signing it I examined carefully the Italian text, and found it a correct and literal translation of the English original. The recital of M. Carafa's titles is awkwardly expressed in English; but as the copies were all prepared, ready for signature, I did not think the matter of sufficient importance to justify delay in the transmission of the Treaty until another post, by requesting two other copies.

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I enclose, also, M. Carafa's full powers, signed by the King, & counter signed by the President of the Council of Ministers.

I trust, that these documents will reach Washington in time to have the Treaty laid before the Senate, and acted on, during this session of Congress. But, in case of accidents, I have extended the period for ratification to *twelve* months, namely to the 13th of January, 1856; so that ratifications might, if necessary, be exchanged, during the early part of next session.

The convention was sent to the Senate with the presidential message of February 14, 1855, and a simple resolution of advice and consent was unanimously agreed to on the following March 3 (Executive Journal, IX, 418, 430). Of the action of the Senate and of the readiness of this Government to exchange ratifications at Washington pursuant to Article 4 of the convention, Owen was duly informed (D.S., 14 Instructions, Two Sicilies, 89, March 10, 1855).

The ratification of the King of the Two Sicilies was brought from Naples by Baron Antonio Winspeare, Chargé d'Affaires at Washington, who was about to set out on his mission (D.S., 2 Despatches, Italy: Naples, No. 37, April 13, 1855). Exchange of ratifications followed on July 14, 1855, and proclamation issued two days later.

Correspondence Regarding the Declaration of Paris

The refusal of the United States to adhere to the Declaration of Paris of 1856 was communicated by Secretary of State Marcy to the French Minister at Washington, Comte de Sartiges, by the celebrated note of July 28, 1856, often (and hereinafter) called the "second Marcy note".[1] But before that date objections of Marcy to the unconditional acceptance of the Declaration of Paris were set forth in identic terms in instructions to various missions. That to Owen was of July 14, 1856, as follows (D.S., 14 Instructions, Two Sicilies, 93; 1 Instructions, Belgium, 94–97):

The diplomatic representatives of several of the European powers, which were parties to the late Paris conference, have very recently presented to this government "the declaration relative to neutral rights" adopted at that conference, and, on behalf of their governments, asked the adhesion of the United States to it. It is presumed that the same course has been adopted by the confederated powers towards other nations. The United States have learned, with sincere regret, that, in one or two instances, the four propositions, with all the conditions annexed, have been promptly, and this government cannot but think unadvisedly, accepted without restriction or qualification.

It is well known that the United States, about two years since, opened negotiations with maritime nations for the general adoption of the second and third propositions contained in the Paris declaration, and that the fourth is but the annunciation of a principle of international law now universally recognized. The conditions which are to accompany the acceptance of the propositions of the Paris conference will, as a necessary consequence, defeat the negotiations of the United States for the adoption of the second and third of the series with every power which has adhered, or may determine to adhere, to "the declaration". In the first place, all the four propositions must be taken, or none; and second, they must be taken not only indivisibly, but with the surrender of an important attribute of sovereignty—that of negotiating with any nation on the subject of neutral rights, unless such negotiations embrace all the propositions contained

[1] That note and the text of the Declaration of Paris, with some account of the negotiations of the time, are printed in the editorial notes to Document 168.

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in the Paris "declaration". Any nation might well hesitate before making such a surrender.

Some of the powers which are parties to that "declaration", and many which are invited to concur in it, are under solemn treaty stipulations with the United States, and it is presumed they are with other nations, in which the right to resort to privateers is not only recognized, but the manner of employing them is regulated with great particularity. How the proposed new engagement can be reconciled with the faithful observance of existing treaty stipulations on the subject cannot be easily perceived.[1]

I shall not, in this despatch, remark upon the incompatibility of these obligations, nor shall I now exhibit the views which this government entertains of the fatal consequences likely to result from the new doctrine now attempted to be introduced into the maritime code to most commercial nations, and especially to those which are not burdened, or may not choose to burden themselves, with large naval establishments.

The right of a commercial State, when unhappily involved in war, to employ its mercantile marine for defence and aggression, has heretofore proved to be an essential aid in checking the domination of a belligerent possessed of a powerful navy. By the surrender of that uncontested right, one legitimate mode of defence is parted with for a like surrender only in form by a strong naval power; but in effect the mutual surrender places the weaker nation more completely at the mercy of the stronger. While the former loses, the latter gains by the mutual surrender, and the freedom of the seas is much more completely given up to a few great powers which have the means and disposition to maintain large navies. This government will more fully develop its views as to the operation of the first principle of the Paris "declaration",—that in relation to the abandonment of the right to issue letters of marque,—in its reply to those powers which have invited its concurrence in that "declaration". The measure, unless it gives a full application to the principle upon which it is based, and is made to withdraw private property upon the ocean from seizure by public armed vessels, as well as by privateers, will be exceedingly injurious to the commerce of all nations which do not occupy the first rank among naval powers.

I am directed by the President to instruct you to present this general view of the subject to the government to which you are accredited, in the hope that it may be induced to hesitate in acceding to a proposition which is here conceived to be fraught with injurious consequences to all but those powers which already have, or are willing to furnish themselves with powerful navies.

When the foregoing instruction was written, the fact that the Government of the Two Sicilies had on May 31 preceding accepted the

[1] The statements in this paragraph are too sweeping and the argument is unsound. With none of the powers signatory of the Declaration of Paris did the United States at this time have any "treaty stipulations on the subject" of privateers, except with Prussia (see Document 24, Articles 15, 19–21, and Document 62, Article 12). With other powers there were "treaty stipulations" in force; such clauses as those in Articles 21 and 26 of the treaty with New Granada of December 12, 1846 (Document 125), were rather usual in treaties with other American states; and it could fairly be said that the manner of employing privateers was "regulated with great particularity" by Articles 15–19, 22, 23, and 25 of the treaty of April 3, 1783 (Document 10), then in force with Sweden and Norway (see Document 55, Article 17). No provision of any treaty of the United States, however, *bound* the parties to the use of privateers; it was wholly within the right of the other parties to such treaties to covenant *inter se* or with third states against privateering; and it was specifically provided by the Declaration of Paris that it was obligatory only among the powers signatory or acceding.

The real question was the one put by Marcy in instructions of August 29, 1856, to various missions (printed in the editorial notes to the convention with Peru of July 22, 1856), namely, whether, if the United States should be at war with a party to the Declaration of Paris, "neutral nations", also parties thereto, would "treat our privateers in any respect differently from the manner in which they have been heretofore treated by them".

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principles of the Declaration of Paris was doubtless unknown at Washington (see 48 British and Foreign State Papers, 144).

The sense of the instruction of July 14, "almost in the words" thereof, was communicated to the Government of the Two Sicilies by note of Owen of August 14, who thus reported a conversation on the subject with the Minister of Foreign Affairs, Luigi Carafa della Spina (D.S., 2 Despatches, Italy: Naples, No. 65, August 18, 1856):

> After despatching the Note referred to, but before it had been translated & submitted to the Minister, I had an opportunity of communicating with him personally on the subject; and he stated to me, that the Conditions annexed to the Paris Declaration were objected to by the Sicilian Government, as they have been by ours; these conditions being regarded by them as inconsistent with existent Treaty stipulations.
>
> He spoke less decidedly as to the first proposition contained in the Declaration; that, namely, which regards the right of issuing letters of marque. Yet I understood him to express satisfaction at the stand we had taken in regard to it; and to intimate, that the Sicilian Government coincided in our view.

In the meantime, with the following instruction of August 5, 1856, and seemingly still without knowledge at Washington of the position taken by the Government of the Two Sicilies regarding the Declaration of Paris, Marcy had sent to Owen for communication to that Government a copy of the "second Marcy note", of July 28, 1856 (D.S., 14 Instructions, Two Sicilies, 93; 15 Instructions, Spain, 147–48):

> The Government to which you are accredited has been, it is presumed, applied to by the powers which were represented in the late Congress at Paris, to accede to the Declaration there adopted in respect to Neutral rights. To such an application made by France, this Government has replied, and I herewith send you a copy of the note [1] addressed by order of the President to Count de Sartiges the French Minister on that subject. This note contains the views of this Government upon the propositions submitted to it, and you are instructed to make them known at the earliest practicable period to the Minister of Foreign Relations of the Government of the Two Sicilies. A similar application has been made to this Government by Russia, Prussia, Austria, and Sardinia through their respective Ministers, to each of which, a reply has been returned similar to that made to the Imperial Government of France. It is hoped that the reasons assigned for the course the United States propose to take in this important matter, will meet with the approval and concurrence of the Sicilian Government.
>
> You are requested to ascertain and communicate to this Department the determination of the Sicilian Government on this subject.

Owen's note of August 14, 1856, and the communication to the Government of the Two Sicilies (on August 29) of the "second Marcy note", were at first answered under a misapprehension of the terms of the former, owing to poor translation; but when the misunderstanding was cleared up that answer was withdrawn and another, bearing the same date, September 4, 1856, was written by the Minister of Foreign Affairs, as follows (D.S., 2 Despatches, Italy: Naples, No. 66, September 9, 1856, translation enclosed as "Paper A"):

> The undersigned, charged with the Portfolio of Foreign Affairs, has received the note addressed to him under date [2] of the 14th instant, in which Mr. Dale Owen, Minister Resident of the United States of America, informs him of the

[1] Of July 28, 1856; the "second Marcy note".

[2] The date was August 14, 1856.

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communication made to the United States Government of the declaration issued by the powers united in Conference in Paris in regard to the maritime rights of neutrals.

The Government of His Sicilian Majesty, having taken note of the considerations which the American Government desires to present to the powers that took part in that Conference before absolutely accepting the declaration in question, and especially that portion of it which relates to the right of privateering, cannot refrain from noticing and replying to some of the observations contained in the note of Mr. Dale Owen, in which it is admitted that the American Government has seen with regret that powers not represented at the Paris Conference have assented to the new declaration regarding the rights of neuters. And alluding afterwards to the treaty [1] concluded two years since between the Neapolitan and American Governments, he deduces the conclusion that the conditions which must accompany such assent will necessarily place an obstacle in the way of any negotiations of the United States for the adoption of the second and third of the series with any power that may adhere to the declaration.

Such can never be the case between the Government of Naples and that of the United States. A treaty [1] exists between these two Governments in regard to the rights of neutrals in time of war in which no mention is made of the right of privateering; and thereby there is left to each Government the right of free action. A new declaration is presented by the powers united in the Paris Conference, in regard to the commerce of neutrals, whereby the right of privateering is abolished. There was no obstacle preventing His Sicilian Majesty from giving in his adhesion, since the renunciation of the right of issuing letters of marque as to other powers who offer reciprocity does not conflict in the least with previous stipulations in which no mention is made of any such right. And it was in consequence of such a position that the Neapolitan Cabinet, when invited to adhere by the powers signing the declaration, answered to the Austrian Government (which had not only requested adherence to the principles of the declaration, but had also added that the powers which might accede to it could not in future enter into any agreement that did not comprehend all the four principles which make up said declaration) that it adhered to the principles proclaimed by the Conference in regard to the rights of neutrals, but that it declared that, having concluded with the United States of America a treaty which had for base two only of the points contemplated in said declaration, the Neapolitan Government must needs respect an anterior treaty concluded with that power.

The undersigned flatters himself that such considerations will suffice to convince the enlightened Government of the United States that if a sentiment of humanity induced the King, his August Master, to adhere to a declaration which abolishes a right only too disastrous in its inevitable consequences, he believed that in so doing he was violating no existing treaty stipulation.

The undersigned begs leave, at the same time, to acknowledge receipt of the esteemed favor of the 29th ultimo with which Mr. Dale Owen transmitted to him a copy of the despatch [2] addressed under date of the 28th of June [*July*] last by the American Secretary of State to the Comte de Sartiges, relative to the declaration in question.

In the despatch of Owen last cited, he thus reported various conversations which he had had regarding the "second Marcy note":

In the course of the above interview,[3] the Minister alluding to your despatch to the Count de Sartiges, which I trust I may be allowed to say I regard as one of the ablest arguments I have ever read, expressed, in strong terms, his approbation of the addition therein proposed to the article on privateering, namely that private property on the high seas should be exempted from seizure. No such expression, it will be observed, occurs in his reply.

Within the last three or four days, I have had an opportunity of conversing on this subject with the Ministers of France, Prussia & Portugal.

[1] This convention of January 13, 1855.
[2] The "second Marcy note".
[3] Probably that of September 6, 1856.

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The French Minister [1] spoke of our proposal as very beautiful in theory but quite impracticable. "If we are to become so scrupulous", said he, "why should nations go to war at all?" I replied, half in jest & half in earnest, that I had often asked myself the same question; but added, more seriously, that there had been a time when private property on land was not respected by belligerents; now, making a step in advance, civilized nations had agreed to respect it, even though, by siezing it, the resources of an enemy might be materially crippled. Upon the same principle and advancing on the same Christian faith, I thought the next step ought to be, to respect private property, not contraband of war, on the high seas; and that I hoped yet to see that humane principle generally adopted. He replied, that the cases were not analogous. Property already in a country might be looked upon as the means of support of its people; while property coming from other nations was rather to be regarded in the light of a subsidy, or foreign aid to the war. At this point, our conversation was interrupted.

The Prussian Minister, Baron von Canitz,[2] an intelligent man, expressed, as an individual, his unqualified approbation of our course, and his regret that Prussia had not taken the same.

The Portuguese Minister [3] told me, he looked upon the despatch to the Count de Sartiges, every word of which he had read, as unanswerable. He honored our nation for the stand she had taken. But he remarked, that it was only a Power of the first class and in our independent position, that could venture on such a proposition. Had Portugal, for example, he added, put forward such an one, it would but have exposed her to ridicule. She had, therefore, he conceived, no alternative but to adhere.

The Kingdom of the Two Sicilies

The ending of the existence of the Kingdom of the Two Sicilies as a separate international entity and its incorporation in the Kingdom of Italy date from 1860.

[1] Baron Anatole Brenier.
[2] Baron Karl von Canitz und Dallwitz.
[3] Vicomte d'Alte.

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Treaty Series No. 155
10 Statutes at Large, 1138–42
18 *ibid.*, pt. 2, Public Treaties, 396–97

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HANOVER : JANUARY 18, 1855

Convention for the Mutual Extradition of Fugitives from Justice in Certain Cases, signed at London January 18, 1855. Original in English and German.
Submitted to the Senate February 8, 1855. (Message of February 7, 1855.) Resolution of advice and consent March 3, 1855. Ratified by the United States March 8, 1855. Ratified by Hanover March 16, 1855. Ratifications exchanged at London April 17, 1855. Proclaimed May 5, 1855.

Convention for the mutual extradition of fugitives from justice, in certain cases, concluded between the Government of the United States on the one part, and the Kingdom of Hanover on the other part.

The United States of America and His Majesty the King of Hanover, actuated by an equal desire to further the administration of justice and to prevent the commission of crimes in their respective countries, taking into consideration, that the increased means of communication between Europe and America facilitate the escape of offenders, and that consequently provision ought to be made, in order that the ends of justice shall not be defeated, have determined to conclude an arrangement, destined to regulate the course, to be observed in all cases with reference to the extradition of such individuals, as hav-

Vertrag zwischen den Vereinigten Staaten einerseits und dem Königreich Hannover andererseits wegen der in gewissen Fällen zu gewährenden gegenseitigen Auslieferung der vor der Justiz flüchtigen Verbrecher.

Die Vereinigten Staaten von Amerika und Seine Majestät der König von Hannover, von dem gleichen Wunsche beseelt, in den beiderseitigen Staaten die Verwaltung der Rechtspflege und die Verhütung von Verbrechen zu befördern, in Erwägung dass die verbesserten Verkehrsmittel zwischen Europa und Amerika das Entkommen von Verbrechern erleichtern, und dass es daher einer gemeinschaftlichen Vorsorge bedarf, damit nicht die Zwecke der Gerechtigkeit vereitelt werden, dann in Berücksichtigung der Verfassung und Gesetzgebung Hannovers, welche es der Hannoverschen Regierung nicht ge-

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ing committed any of the offences, hereafter enumerated, in one country, shall have taken refuge within the territories of the other. The Constitution and laws of Hanover however, not allowing the Hanoverian Government to surrender their own subjects for trial before a Foreign Court of Justice, a strict reciprocity requires, that the Government of the United States shall be held equally free from any obligation to surrender Citizens of the United States.

statten, ihre eignen Unterthanen zur Aburtheilung vor fremden Gerichtshöfen auszuliefern, sowie in Berücksichtigung des Grundsatzes genauer Reciprocität, nach welchem auch die Regierung der Vereinigten Staaten eine Verbindlichkeit zur Auslieferung von Bürgern der Vereinigten Staaten, gegenüber der Hannoverschen Regierung, nicht eingehen soll, haben Sich entschlossen, eine Uebereinkunft abzuschliessen, welche in allen Fällen zur Richtschnur des Verfahrens hinsichtlich der Auslieferung solcher Personen dienen soll, welche in dem einen Lande gewisse hiernach namentlich aufgezählte Verbrechen verübt, und sich sodann in das Gebiet des anderen Staates geflüchtet haben.

For which purposes the high contracting Powers have appointed as their Plenipotentiaries:—

The President of the United States, James Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States, at the Court of the United Kingdom of Great Britain and Ireland:

His Majesty the King of Hanover, the Count Adolphus von Kielmansegge, his Envoy Extraordinary and Minister Plenipotentiary to Her Britannic Majesty, Grand Cross of the Order of the Guelphs, &c., &c.

Zu diesem Zwecke haben die hohen contrahirenden Theile zu Ihren Bevollmächtigten ernannt:

Der Präsident der Vereinigten Staaten James Buchanan, ausserordentlichen Gesandten und bevollmächtigten Minister der Vereinigten Staaten am Hofe des Vereinigten Königreichs von Grossbritannien und Irland.

Seine Majestät der Kônig von Hannover den Grafen Adolph von Kielmansegge, Allerhöchst Ihren ausserordentlichen Gesandten und bevollmächtigten Minister bei Ihrer Grossbritannishen Majestät, Grosskreuz des Guelphen-Ordens. &c

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who after reciprocal communication of their respective full powers, found in good and due form, have agreed to the following Articles.

ARTICLE I.

The Government of the United States and the Hanoverian Government promise and engage, upon mutual requisitions by them or their Ministers, officers, or authorities respectively made, to deliver up to justice all persons, who being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: provided that this shall only be done upon such evidence of criminality, as according to the laws of the place, where the fugitive, or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other Magistrates of the two Governments shall have power, jurisdiction and authority upon complaint made under oath, to issue a warrant

welche nach gegenseitiger Mittheilung ihrer einschlägigen in guter und gehöriger Form befundenen Vollmachten über nachfolgende Artikel übereingekommen sind.

ARTIKEL I.

Die Regierung der Vereinigten Staaten und die Königlich Hannoversche Regierung versprechen und machen sich verbindlich, auf gegenseitige Requisitionen, welche respective sie selbst, oder ihre Gesandten, Beamten oder Behörden erlassen, alle Individuen der Justiz auszuliefern, welche beschuldigt, das Verbrechen des Mordes oder eines Angriffs in mörderischer Absicht, oder des Seeraubes, oder der Brandstiftung, oder des Raubes, oder der Fälschung, oder des Ausgebens falscher Documente, oder der Verfertigung oder Verbreitung falschen Geldes, sei es gemünztes oder Papiergeld, oder des Defectes, oder der Unterschlagung öffentlicher Gelder, innerhalb der Gerichtsbarkeit eines der beiden Theile begangen zu haben, in dem Gebiete des anderen Theils eine Zuflucht suchen, oder dort aufgefunden werden, mit der Beschränkung jedoch, dass dies nur auf solche Beweise für die Strafbarkeit geschehen soll, welche nach den Gesetzen des Ortes, wo der Flüchtling oder das so beschuldigte Individuum aufgefunden wird, dessen Verhaftung und

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for the apprehension of the fugitive or person so charged, that he may be brought before such judges, or other Magistrates respectively, to the end, that the evidence of criminality may be heard and considered; and if on such hearing the evidence be deemed sufficient, to sustain the charge, it shall be the duty of the examining judge or magistrate, to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

Stellung vor Gericht rechtfertigen würden, wenn das Verbrechen oder Vergehen dort begangen wäre, und die respectiven Richter und anderen Behörden der beiden Regierungen sollen Macht, Befugniss und Autorität haben, auf eidlich erhärtete Angabe einen Befehl zur Verhaftung des Flüchtlings oder so beschuldigten Individuums zu erlassen, damit er vor die gedachten Richter oder anderen Behörden zu dem Zwecke gestellt werde, dass der Beweis für die Strafbarkeit gehört und in Erwägung gezogen werde, und wenn bei dieser Vernehmung der Beweis für ausreichend zur Aufrechthaltung der Beschuldigung erkannt wird, so soll es die Pflicht des prüfenden Richters oder der Behörde sein, selbigen für die betreffende executive Behörde festzustellen, damit ein Befehl zur Auslieferung eines solchen Flüchtlings erlassen werden könne.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Die Kosten einer solchen Verhaftung und Auslieferung sollen von dem Theile getragen und erstattet werden, welcher die Requisition erlässt, und den Flüchtling in Empfang nimmt.

ARTICLE II.

The Stipulations of this Convention shall be applied to any other State of the Germanic confederation, which may hereafter declare its accession thereto.

ARTIKEL II.

Die Bestimmungen dieser Uebereinkunft sollen auf jeden anderen Staat des Deutschen Bundes Anwendung finden, der später seinen Beitritt zu derselben erklärt.

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ARTICLE III.

None of the contracting parties shall be bound, to deliver up its own subjects or Citizens under the Stipulations of this Convention.

ARTIKEL III

Keiner der contrahirenden Theile soll gehalten sein, in Gemässheit der Bestimmungen dieser Uebereinkunft, seine eigenen Unterthanen oder Bürger auszuliefern.

ARTICLE IV.

Whenever any person, accused of any of the crimes enumerated in this Convention, shall have committed a new crime in the territories of the State, where he has sought an asylum or shall be found, such person shall not be delivered up under the Stipulations of this Convention, until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTIKEL IV

Wenn ein Individuum, welches eines der in dieser Uebereinkunft aufgezählten Verbrechen angeklagt ist, ein neues Verbrechen in dem Gebiete des Staates begangen haben sollte, wo er eine Zuflucht gesucht hat oder aufgefunden wird, so soll ein solches Individuum nicht eher in Gemässheit der Bestimmungen dieser Uebereinkunft ausgeliefert werden, als bis dasselbe vor Gericht gestellt worden sein, und die auf ein solches neues Verbrechen gesetzte Strafe erlitten haben, oder freigesprochen worden sein wird.

ARTICLE V

The present Convention shall continue in force until the First of January, One thousand eight hundred and fifty-eight, and if neither party shall have given to the other six months previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months, after either of the high contracting parties shall have given notice to the other of such intention; each of

ARTIKEL V.

Die gegenwärtige Uebereinkunft soll bis zum ersten Januar Eintausend achthundert und acht und funfzig in Kraft bleiben, und wenn kein Theil dem anderen sechs Monate vorher Mittheilung von seiner Absicht macht, dieselbe dann aufzuheben, so soll sie ferner in Kraft bleiben, bis zu dem Ablaufe von zwölf Monaten, nachdem einer der hohen contrahirenden Theile dem anderen von einer solchen Absicht Kennt-

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the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said First day of January, One thousand eight hundred and fifty-eight.

ARTICLE VI

The present Convention shall be ratified by the President by and with the advice and consent of the Senate of the United States and by the Government of Hanover, and the ratifications shall be exchanged, in London within Three months from the date hereof or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed this Convention and have hereunto affixed their Seals.

Done in duplicate in London the Eighteenth day of January One thousand eight hundred and fifty-five and the Seventy-ninth year of the Independence of the United States.

JAMES BUCHANAN [Seal]
A KIELMANSEGGE [Seal]

niss gegeben; wobei jeder der hohen contrahirenden Theile sich das Recht vorbehält, dem anderen eine solche Mittheilung zu jeder Zeit nach dem Ablaufe des gedachten ersten Januars Eintausend achthundert und acht und funfzig zugehen zu lassen.

ARTIKEL VI.

Die gegenwärtige Uebereinkunft soll ratificirt werden von dem Präsidenten unter und mit der Genehmigung und Zustimmung des Senates der Vereinigten Staaten, und von der Hannoverschen Regierung, und die Ratificationen sollen zu London innerhalb drei Monaten von dem heutigen Datum oder wo möglich früher ausgewechselt werden.

Zu Urkunde dessen haben die respectiven Bevollmächtigten diese Uebereinkunft unterzeichnet, und hierunter ihre Siegel beigedrückt.

In zweifacher Ausfertigung geschehen zu London den achtzehnten Januar des Jahres Eintausend achthundert und fünf und funfzig, und im neun und siebzigsten Jahre der Unabhängigkeit der Vereinigten Staaten.

JAMES BUCHANAN [Seal]
A KIELMANSEGGE [Seal]

NOTES

This convention of January 18, 1855, was signed in duplicate (see the final clause); the example in the treaty file is written in English and German (not in German script), with the English in the left columns. As may be seen from the printed text, the United States has therein naming precedence throughout in both versions.

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Among the other file papers are the attested Senate resolution of March 3, the duplicate United States instrument of ratification of March 8, and the original proclamation of May 5, 1855. These are in customary form. The protocol of exchange of ratifications at London on April 17, 1855, is written in English and German (not in German script), the former preceding, and is in form similar to the protocol of exchange of the convention with Bavaria of September 12, 1853 (see the notes to Document 162).

Also in the file is the ratification of the King of Hanover, written in German. The included text of the convention has the German in the left and the English in the right columns, and therein Hanover is named first throughout in both versions, with the indicated signatures of the Hanoverian Plenipotentiary above those of the Plenipotentiary of the United States. Accompanying the instrument of ratification is a translation thereof furnished by the Plenipotentiary of Hanover at the time of the exchange (D.S., 67 Despatches, Great Britain, No. 68, April 20, 1855), literally of this tenor:

We George The Fifth, by the grace of God King of Hanover, Royal Prince of Great Britain & Ireland, Duke of Cumberland, Duke of Brunswic and Luneburg &ª

The negociations carried on between Our Plenipotentiary and the Plenipotentiary of the United States of America named for the purpose of coming to an agreement regarding the mutual delivery of criminals having resulted in the conclusion of a Treaty Signed at London on the 18th of January 1855, which Treaty verbally runs as follows:

(*Follows the text of the Treaty*)

And We having found the tenour of this Treaty in every wise conform to Our Royal intention,

We hereby expressly ratify and approve the preceding Treaty, and engage that the Same, in all its points and clauses, Shall be duly executed and carried out on the part of the Kingdom of Hanover.

In faith whereof We have Signed the present Act of Ratification with Our own hand and have caused Our Royal Seal to be affixed thereto.

Given at Hanover on the 16. of March 1855.

(LS) (Signed/ Georg R.

(Signed/ Lenthe

I hereby certify that the above Act of Ratification, after the contents of the Same had been read to The King, has been Signed by His Majesty in my presence.

Hanover, 16. March 1855.

/Signed/ G. von Witzendorff,
Secretary General to the Royal Department for foreign Affairs.

There is the formal statement in the preamble of the "reciprocal communication" of the full powers. That given to James Buchanan, Minister at London, under date of December 18, 1854, is in customary form (D.S., 4 Credences, 86); but there is nothing further of record regarding the full power of the Plenipotentiary of Hanover, Count Adolph von Kielmansegge.

The Negotiations

The extradition convention with Prussia and nineteen other German states, of June 16, 1852 (Document 152), was open to accession on

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the part of "any other State of the Germanic Confederation" (Article 2); by July 1854 six German states had acceded to the convention of 1852 (see the notes to Document 152 for these and for a list of the members of the Germanic Confederation); certain of the nine remaining members of the Germanic Confederation preferred to make separate extradition conventions with the United States rather than to accede to the 1852 convention; such separate extradition conventions made with states of the Germanic Confederation were four: Bavaria, September 12, 1853 (Document 162); this convention with Hanover of January 18, 1855; that with Austria of July 3, 1856 (11 Statutes at Large, 691–94); and that with Baden of January 30, 1857 (*ibid.*, 713–17).

The brief negotiations which led to this convention were conducted by the respective Ministers at London of the United States and Hanover, James Buchanan and Count Adolph von Kielmansegge. Pursuant to a conversation on November 24, the Hanoverian Minister sent to Buchanan the following memorandum of November 25, 1854, with a note of the same date in which he wrote: "As time presses, I would suggest, whether Your Excellency might not by the next Steamer ask for the Full Power of Your Government enabling You to negociate and conclude the Treaty, with or without the extension proposed by my Government. I shall not fail to do the same forthwith" (D.S., 66 Despatches, Great Britain, No. 50, November 28, 1854, enclosures):

Memorandum.

The Hanoverian Government is desirous of concluding with The Government of the United States a Convention for the mutual Delivery of Criminals, similar to the one concluded with Prussia and other German States on the 16. June 1852.

The Hanoverian Government however wishes to see the stipulations of such a Convention extended to Criminals against the Law of Property, viz.

Theft,

Fraud without concurrence of Forgery, and

Embezzlement of private Moneys.

The Government of Prussia has offered to mediate for Hanover the accession of the latter to her own Treaty, but Hanover prefers concluding a separate Convention,—if possible with the addition of the just-mentioned cases,—if not, similar in tenour to the Convention with Prussia.

The Undersigned is accordingly directed to ascertain, in a manner most strictly confidential, through the medium of the American Minister accredited at the Court of St. James's, the intentions of the Government of the United States, namely

whether the said Government is willing to conclude a separate Convention with Hanover;—

whether it admits the above extention, and

whether it consents to have the Convention negociated, signed and the Ratifications of the same exchanged here in London, giving Full Power to that effect and for the purpose of negociating with the Undersigned, to The Minister of the United States in London.

The Hanoverian Government has authorized the Undersigned to make these overtures in the strictest confidence, in urging the request, that the pending negociations may not come to the knowledge of any foreign Government nor of its Representatives until after the exchange of the Ratifications.

London, 25th November 1854.

A. KIELMANSEGGE

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The note and memorandum of Kielmansegge were sent on with the cited despatch of November 28 to Secretary of State Marcy, who thus responded on December 19, 1854 (D.S., 16 Instructions, Great Britain, 327):

> I herewith transmit to you the President's full power to conclude a Convention with Hanover for the mutual delivery of persons fugitive from justice charged with crimes in certain cases. Whilst, however, he is willing that such a convention should be negotiated and signed at London, and the respective ratifications of the same exchanged there too, he cannot consent to allow its stipulations to embrace any other offences than those enumerated in our extradition treaties with Prussia and Bavaria, which are accordingly to be made the basis of your negotiations on the subject.

The convention was signed on January 18, 1855; its text was taken in general from that with Prussia and other German states of June 16, 1852 (Document 152), and in particular from that with Bavaria of September 12, 1853 (Document 162); so this convention, like the two others mentioned, contains a clause permitting accession[1] by other German states (Article 2).

On the day after signature, the convention was transmitted to the Department of State by Buchanan with his despatch No. 57 (D.S., 66 Despatches, Great Britain), wherein he urged action during the session of the Senate then holding (the second session of the Thirty-third Congress, ending March 3, 1855). The convention was sent to the Senate with the presidential message of February 7, to which Buchanan's request for early action was an accompaniment (Senate Confidential Executive Document No. 8, 33d Congress, 2d session, 36 Regular Confidential Documents, 535–41). There was no difficulty in the Senate; a resolution of advice and consent in simple form was passed unanimously on the last day of the session (see Executive Journal, IX, 409, 422, 435–36); the United States instrument of ratification (March 8) was sent to Buchanan on March 10 with the usual power (March 8) to make the exchange (D.S., 16 Instructions, Great Britain, 333; 4 Credences, 102).

In the meantime a difficulty had arisen at London, as it had been discovered that the recital in the preamble to the effect that the Constitution and laws of Hanover do not allow the Hanoverian Government to surrender their own subjects was erroneous. Buchanan thus reported the matter under date of March 9, 1855 (D.S., 67 Despatches, Great Britain, No. 62):

> Count Kielmansegge, the Hanoverian Minister, called on the 15th February last, and informed me he had just learned from his Government that there was a mistake in the preamble to the Convention recently concluded between him and myself, in copying into it the following words from our Treaties with Prussia and Bavaria: "The Constitution and Laws of Hanover, however, not allowing the Hanoverian Government to surrender their own subjects for trial before a Foreign Court of Justice, a strict reciprocity requires, that the Government of the United States shall be equally free from any obligation to surrender citizens of the United States"; and he requested me to write to Washington and have this mistake corrected. I told him it was then too late, as the Senate would adjourn on the 3d of March. He asked if we could not correct this error in form by a protocol on the exchange of ratifications, which I, of course, answered in the negative.

[1] No such accession took place.

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He called again on Tuesday last [March 6] and manifested much anxiety upon the subject. After considerable conversation, it was agreed that I should ascertain from you, whether after the ratifications had been exchanged in due form, he might address me a note expressing the intention of the Hanoverian Government not to publish, as a part of the Convention, these words of the preamble inserted by mistake. I told him that as they constituted no part of the Treaty and were merely an unfounded recital, I did not think that you would object to the omission of them from the copy published in Hanover; but that the whole must be published in the United States. I do not perceive any valid objection to this course; but I shall not, as I informed him, proceed to the exchange of ratifications until you inform me that it will meet your approbation. Please to let me hear from you on this matter with as little delay as may be convenient. Should the Count agree to exchange the ratifications in the usual form, without afterwards addressing me any such note as I have mentioned, then I shall proceed to the exchange, leaving it to the Government of Hanover, on its own responsibility, to act in regard to publication as it may think proper.

The mistake in the preamble, however, did not hinder the exchange of ratifications, which took place on April 17. At that time Buchanan read to the Hanoverian Plenipotentiary the following paragraph from his instructions of the previous March 31, with which Von Kielmansegge "was entirely satisfied" (D.S., 67 Despatches, Great Britain, No. 68, April 20, 1855; 16 Instructions, Great Britain, 336–38):

The view which you have taken of the preamble to the Extradition Treaty with Hanover, is considered to be correct. If the ratifications should be exchanged, the instrument must be published in this country word for word as it was signed by the negotiators, approved by the Senate and ratified by the President. The Hanoverian Government is at liberty to consult its own pleasure in regard to the publication of the Convention in Hanover. We shall expect it to be executed there however, precisely in accordance with the terms of the exchange copy, and will be prepared to reciprocate the proceeding. If, however, that government should in any case think proper to surrender a Hanoverian subject who may have committed in the United States a crime mentioned in the Treaty, and whose extradition may be asked for, we cannot promise to surrender a citizen of the United States without a formal amendment of the Convention providing for this object.

The Hanoverian promulgation (*Patent* or *Verordnung*) of the convention is printed in Sammlung der Gesetze, Verordnungen und Ausschreiben für das Königreich Hannover, vom Jahre 1855, 155–58. This paper, dated at Montbrillant [1] July 23 and issued at Hanover July 30, 1855, begins with the name and titles of the monarch, George V, preceding a recital adapted from and mostly in the wording of the German version of the preamble of the convention, but omitting all reference to the Constitution and laws of Hanover; that recital is followed by the text of the convention (in German and English) to the extent only of Articles 1 to 5 thereof; and after the included text of those articles come a recital of ratification and exchange of ratifications, words of publication, direction for inclusion in the collection of the laws, date, signature, countersignature, etc. With a note of August 23, 1855, the Secretary to the Hanoverian Legation at London transmitted to Buchanan two copies of this "Number 21, of the official Law Publication of the Kingdom of Hanover, containing

[1] Near St. Claude, in the French Jura.

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the Royal Patent, dated 23d July 1855, for the publication of the Treaty" (D.S., 67 Despatches, Great Britain, No. 88, September 4, 1855, and enclosure, with one copy of the print).

Duration of the Convention

No notice of termination of this convention with Hanover was given by either party pursuant to Article 5.

Following the war of 1866 between Austria and Prussia, in which various other German states took part, Hanover being on the side of Austria, the separate existence of the Kingdom of Hanover came to an end with the decree of September 20, 1866, whereby Hanover was incorporated into the Kingdom of Prussia (translation in 56 British and Foreign State Papers, 1067–68).

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ADDENDUM TO THE NOTES TO DOCUMENT 64
BRAZIL : DECEMBER 12, 1828

The Treaty of Peace, Friendship, Commerce, and Navigation with Brazil, signed at Rio de Janeiro December 12, 1828, is printed in volume 3 of this edition, pages 451–84. When the editorial notes to this treaty were written, despatch No. 116 of William Tudor, Chargé d'Affaires at Rio de Janeiro, of the same date as the treaty, with which Tudor transmitted the original instrument, was not available (see vol. 3, pp. 476–77). That despatch has since been found in the files of the Senate transferred to The National Archives (see Miller, "A Despatch of William Tudor", in Hispanic American Historical Review, XIX, 55–60). The despatch, which was marked confidential, was received at the Department of State on February 25, 1829, and was an accompaniment to the presidential message of February 26, 1829, submitting the treaty to the Senate. The text of the despatch follows:

N° 116. *Confidential.*

LEGATION OF THE U.S.A.
Rio Janeiro, December 12th, 1828.
[Received February 25, 1829.]

SIR, I have now the honor to inclose the Treaty which I have signed with the Brazilian Plenipotentiaries. After its being seven weeks in the hands of the Council of State, I was at length obliged to press very closely for its completion, with the hope it might reach you in time to be acted upon during the present session. Having no one to aid me in copying or collating, and with a pressure of business, & unluckily at the same time an access of indisposition that almost incapacitates me for it, I fear there may be some verbal errours tho' I trust not serious ones.

As I have informed you in previous letters, I submitted as a basis, the Treaty [1] with Central America; and as this has been adopted with a few alterations, I will for the sake of convenience remark upon this in comparison with that Treaty, which will facilitate the examination.

1. In our first conference I suggested the omission of the Invocation of the Trinity; they looked grave, as a little startled at the proposition, and said they always adopted it. I then remarked that my suggestion was not made from any doubts of the doctrine, I subscribed to it; but I thought as we had so many proofs, that such an appeal did not sanctify what it covered, tho' intended reverentially it might be thought more justly to have a constant effect. I asked what was the reason for selecting this dogma in preference to any other of the Christian faith, a question I have frequently asked in South America, & never had a satisfactory answer. My own opinion as to its origin may be erroneous, but if it be just, it is a form wholly inapplicable except in treating with Musselmen, where it would be disputed.

2. In the first section of the preamble, you will perceive a slight alteration of the phraseology, which I made as more suitable to the temporary circumstances

[1] Of December 5, 1825, with the Central American Federation (Document 50).

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of our relations. In the *First* Article (as before-mentioned the reference is to the Treaty with Central America) there is no alteration.

3. In the *second* Art. there is an addition reserving to Brazil the right of forming an exception, with regard to Portugal. All the Treaties they have negotiated with England, France, Austria, Denmark, the Hanse Towns, and Holland, contain it;[1] & I found for reasons that I need not enlarge upon, that it was impossible to avoid it. I however stated distinctly that it was contrary to my instructions. They however assured me, & I am convinced of it, that the exception will not have any effective operation. Besides the recent law equalizes the duties for all nations. By their present Treaty with Portugal[2] she pays 15 pr Ct duty—they cannot lessen this, the state of their finances forbids it. Nearly the entire revenue is derived from the Custom House & is inadequate for their wants, & it is impossible for diminish it by an favours to Portugal during the term of this Treaty. When their present Treaty with England[3] expires, they will be at liberty to raise their tarif, until then they have bound themselves not do so. I believe therefore the exception will be harmless I hope these reasons without further details will justify my assenting to it.

4. The *Third* Art. is without alteration. There is an addition to the *Fourth*, respecting Brazil ships, agreeing that if the owner & Captain are Brazilians, & the papers are in due form, they shall be so considered. This provision is also inserted in all their Treaties. I hope it will not be considered essentially injurious.

5. Articles 5, 6. 7. 8. & 9. are adopted without alteration. To the 10th is added uselessly I think the words, *"unless they be destined for consumption"—entered* may be substituted for *destined*, as a more exact term, but I did not like to make an erasure, tho' it is a careless translation. You will here perceive, what I have found throughout, that they felt an excessive suspicion on every point however remotely connected with the revenue. They feel so sorely the most impolitic manner, by which they fettered themselves in their Treaty with England, and that during the existence of that Treaty, they can make no increase of duties, that I found they were anxious lest they might commit themselves in the slightest manner on this subject. This appears again in the *11th Art.* They wished to strike out the latter of that article, because they said it was useless; that Americans might hold real estate as well as all other in Brazil. I told them that in general aliens could not hold real estate with us, & that the clause was wanted for their protection: the prohibiting any duties of detraction excited their fears as making an opening, that might be used against the revenue; at length it was agreed it should remain subject to the alteration you will observe, after the words, *"without molestation"* it reads "nor any other charge than those imposed by the laws of the country". But according to their laws the whole provision is unnecessary.

In *Art. 12.* there is an omission of some importance—all the latter part was struck out, so that it terminates with the words, *"in all their trials at law"*. I tried hard to prevent this, but they said that it was out of their power to agree to it, however they might desire it. That their laws needed great reformation, that I had seen what the Emperor had said upon the subject, & the whole nation was anxious for a reformation, which they trusted would soon take place, but that in the meantime they could do no more than put us on an equal footing with their own subjects.

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[1] Treaty of Amity and Commerce with Great Britain, signed at Rio de Janeiro August 17, 1827, Article 20 (14 British and Foreign State Papers, 1008–25); Treaty of Friendship, Navigation, and Commerce with France, signed at Rio de Janeiro January 8, 1826, Article 14 (13 *ibid.*, 805–20); Treaty of Commerce and Navigation with Austria, signed at Vienna June 16, 1827, Article 6 (15 *ibid.*, 923–31); Treaty of Commerce and Navigation with Denmark, signed at Rio de Janeiro April 26, 1828, Article 2 (*ibid.*, 717–29); Treaty of Commerce and Navigation with the Hanseatic Republics, signed at Rio de Janeiro November 17, 1827, Article 8 (14 *ibid.*, 715–23); Treaty of Friendship, Commerce, and Navigation with the Netherlands, signed at Rio de Janeiro December 20, 1828, Article 8 (16 *ibid.*, 557–65); also the Treaty of Amity, Navigation, and Commerce with Prussia, signed at Rio de Janeiro July 9, 1827, Article 8 (16 *ibid.*, 1201–5).

[2] Treaty Concerning the Recognition of the Empire of Brazil, signed at Rio de Janeiro August 29, 1825 (12 *ibid.*, 674–78).

[3] Cited above.

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7. The *13th* Art. is without alteration. In the 14th, in the clause, "of those who are the enemies of both or either party" the words of both are struck out. The Marquess of Aracaty [1] told me, in our last conference on the subject, that this objection was made in the Council, they asked how it was possibly for one enemy to be trading directly with another and that neither he nor the minister of Marine could answer the difficulty, after considering it a little, I was obliged to own myself in the same predicament, & therefore assented to the words being omitted. In the *15th Art.* the term of *two* months is extended to *four*, this was a suggestion of the Council on account of the distance of Brazil. I assented to it.

8. Articles 16. 17. & 18 are adopted without any change. In *Art 19* there is an addition relative to vessels lading a cargo in a blockaded port, it was suggested by them, & appearing to me to harmonize with the general principle, I agreed to it.

In *Art. 20* you will see the provision as to the ship of war visiting a neutral is changed. I made the alteration in part, as regarded the boat, which it was *impossible* for any ship of war to comply with. The Minister of Marine being a navy officer also, objected to the keeping beyond the reach of cannon shot, which is nearly impossible, & which in almost every case it would be unjustifiable in any officer to do. As it now stands being practicable it is more likely to be complied with.

9. In the *21st Art.* they wish to strike out the concluding part, which would have made the law decisive, & the vessel must be condemned for want of the documents specified. But I convinced them this might be very cruel in its operation, that a Captain might lose his papers, have them stolen &c. it was therefore agreed it should remain inserting after the words, *"unless the same defect"*— "shall be proved to be owing to accident. Articles 22 to 32 both inclusive are copied without alteration The *first* section of Art. 33 was altered by me to provide against the unintentional expiration of the Treaty according to your instructions.

You will perceive that I have made no provision for the admission of stores for our ships of war on board private merchant ships, tho' the subject is alluded to incidentally in one of your letters. I did not omit this without much reflection & observation, and a full conviction, that we shall gain by adopting the practice of other nations and sending out these supplies in regular transports. This is question which not only applies to Brazil, but also to Chile & Peru, & may hereafter to other countries. In the first place, the offer of reciprocity is wholly nugatory, it is hardly possible to imagine a case, where any of these countries should have a squadron stationed on our coast. Bringing out merchant stores in a vessel that has other cargo, or that is not entirely in government service, leads to suspicion, that smuggling may be facilitated by it, a topic on which they are very sore, as they suffer so much. And when they ask why we do not follow the same course as the English & French, & use transports that carry a pendant, & therefore meet with no obstruction or even visit from the custom house it is difficult to answer. In Peru [2] I obtained an exemption from duties on our stores but in Chile we always have paid and still do pay a Duty & heavy government storeage. Here they gave fair warning on the subject. But it is not only the negative side is strong in this argument, the *positive* is equally so. I am convinced it would not only add greatly to the convenience of the Navy, but also be more economical in the end; and I hope all further trouble will be avoided, in these different countries, by taking up transports by the year, putting on board a lieutenant as an agent, & letting them wear a pendant. For this purpose it will be necessary to enact a law that no merchant vessel shall wear a pendant, which is not allowed by other nations to their merchant vessels, & which tho' a mere trifle is an important distinction. I will not enlarge upon this subject because I have done so elsewhere, but I hope you will not disapprove the course I have followed.

Whenever a Consular Convention is formed it will be necessary to insert an article on the subject of fees for the *exequatur*. Here the Commission is registered in several different offices, & the fees altogether exceed two hundred dollars.

[1] João Carlos Augusto de Oyenhausen, Conde de Oyenhausen, Marquez do Aracaty, Minister of Foreign Affairs.

[2] For Tudor's service in Peru, see Wriston, Executive Agents in American Foreign Relations, 423.

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I hope this treaty may be productive of salutary consequences besides enlarging our commerce. I believe its liberal, fair, reciprocal provisions have given them general satisfaction. The Ministers have more than once contrasted it with the European treaties, full of jealousy, restriction, & limited as they say to one object that of the 15 per Ct duty. The Minister of Foreign Affairs told me, that he should endeavour to make all future treaties conform to this, he says it is a proof of the liberal policy of both countries. The ideas I have mentioned as having thrown out respecting our similarity of interests in some points regarding the restrictive system of some European powers, their navigation laws, colonial system &c. have taken root, & I have no doubt will fructify in time. I find they have meditated upon them, as more than once allusions have been made to the subject.

I will only add that I feel great anxiety, about this my first attempt in this way. I hope for the reasons before given, that the alterations I have assented to will not essentially deteriorate the excellent model, I had for my guide, nor impair the real value of the Treaty. I think it will prove of lasting importance to our relations with this country.

I have the honor to be with great respect
Your Most Obed Svt

W. Tudor

To the Honble Henry Clay
Secretary of State. Washington.

P.S. Since this letter was prepared, I received a note from the Marquess of Aracaty fixing tomorrow morning for signing—and since he has called on me himself, to say that the whole documents are completed, the ratification signed by the Emperor with full powers to exchange &c. This is beyond my hopes—they told me two days ago, that the latter could not be done, as the Emperor was going a short journey, to place one of his children in the country, for a change of air, but that it should be got ready to send sometime hence. I was excessively desirous to have the whole completed now, and a little finesse by which I think this object was brought about, would make you smile in conversation, but is not here worth repeating.

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